

2-28-2013

McAmis v. State Clerk's Record Dckt. 40417

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Vol. 1 of 5

LAW CLERK

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

STATE OF IDAHO

Plaintiff and

Respondent
VS

GREGORY S MCAMIS

Defendant and

Appellant



Appealed from the District Court of the
Third Judicial District of the State of
Idaho, in and for Adams County

Hon. BRADLY S FORD, District Judge

SARA B THOMAS
Public Defender

LAWRENCE WASDEN, ATTORNEY GENERAL
Attorney for Respondent

CASE #
40-17-2012-
40417 Copy

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff/Respondent,

vs

GREGORY MCAMIS,

Defendant/Appellant.

SUPREME COURT #40417

CLERKS RECORD ON APPEAL

Appeal from the District Court of the Third Judicial District
of the State of Idaho, in and for the County of Adams.

**HONORABLE BRADLY S FORD
DISTRICT JUDGE**

SARA B THOMAS
State Appellate Public Defender
3050 N Lake Harbor Ln Ste 100
Boise, ID 83703

ATTORNEY FOR APPELLANT

LAWRENCE WASDEN
Attorney General
Statehouse PO Box 83720
Boise, ID 83720-0010

ATTORNEY FOR RESPONDENT

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Date: 12/5/2012

Third Judicial District Court - Adams County

User: TARA

Time: 11:09 AM

ROA Report

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Case: CV-2010-0002655 Current Judge: Bradly S Ford
 Gregory Scott McAmis, Plaintiff vs State Of Idaho, Defendant

Gregory Scott McAmis, Plaintiff vs State Of Idaho, Defendant

Date	Code	User	Judge
9/28/2010	NCPC	JAN	New Case Filed - Post Conviction Relief
		JAN	Filing: H10 - Post-conviction act proceedings Paid by: McAmis, Gregory Scott (subject) Receipt number: 0013981 Dated: 09/28/2010 Amount: \$.00 (Cash) For: McAmis, Gregory Scott (subject)
	PETN	JAN	Petition and Affidavit for Post Conviction Relief
	PROS	JAN	Prosecutor assigned Myron Dan Gabbert Jr
10/13/2010	ORDR	JAN	Order Regarding Court Appointment of Attorney
11/17/2010	NOHG	JAN	Notice Of Hearing (12-3-10)
	HRSC	JAN	Hearing Scheduled (Status 12/03/2010 10:30 AM) Defendant appearing by telephone
12/3/2010	HRHD	JAN	Hearing result for Status held on 12/03/2010 10:30 AM: Hearing Held Defendant appearing by telephone
	CMIN	JAN	Court Minutes Hearing type: Status Hearing date: 12/3/2010 Time: 10:50 am Courtroom: Court reporter: Yvonne Hyde Gier (telephone) Minutes Clerk: JAN Tape Number: Party: Gregory McAmis Prosecutor: Myron Gabbert
12/7/2010	ORPD	JAN	Subject: McAmis, Gregory Scott Order Appointing Public Defender Kelly R Whiting
	HRSC	JAN	Hearing Scheduled (Status 01/07/2011 10:00 AM) Post Conviction
12/14/2010	NOTC	VIANNE	Notice Declining Appointment As Attorney For Petitioner
12/21/2010	ORPD	JAN	Subject: McAmis, Gregory Scott Amended Order Appointing Public Defender Tyler Rounds
	ORDR	JAN	Order Vacating Hearing and Notice of Hearings
12/22/2010	CONT	JAN	Continued (Status 02/04/2011 10:00 AM) Post Conviction
	HRSC	JAN	Hearing Scheduled (Evidentiary 03/04/2011 01:00 PM) Post Conviction
12/23/2010	ORDR	JAN	Order to Transport
1/13/2011	MOTN	JAN	Motion for Preparation of Transcript
	MOTN	JAN	Ex Parte Motion to Re-Extend Time to File Amended Petition and Vacate Status Conference
1/14/2011	ORDR	JAN	Order to Re-Extend Time to File Amended Petition and Vacate Status Conference
	CONT	JAN	Continued (Status 04/01/2011 09:00 AM) Post Conviction

Gregory Scott McAmis, Plaintiff vs State Of Idaho, Defendant

Date	Code	User	Judge
1/14/2011	ORDR	JAN	Order Vacating Evidentiary Hearing
	HRVC	JAN	Hearing result for Evidentiary held on 03/04/2011 01:00 PM: Hearing Vacated Post Conviction
	ORDR	JAN	Order for Preparation of Transcript
2/23/2011	AFFD	JAN	Affidavit of Tyler Rounds - attorney fees (December - \$98) (January - \$469)
3/2/2011	MOTN	JAN	Ex Parte Motion to Re-Extend Time to File Amended Petition
	ORDR	JAN	Order to Re-Extend Time to File Amended Petition (60 days)
3/4/2011	LODG	JAN	Transcript Lodged (\$152.75)
4/1/2011	HRHD	JAN	Hearing result for Status held on 04/01/2011 09:00 AM: Hearing Held Post Conviction
	CMIN	JAN	Court Minutes Hearing type: Status Hearing date: 4/1/2011 Time: 9:36 am Courtroom: Court reporter: Minutes Clerk: JAN Tape Number: Party: Gregory McAmis, Attorney: Tyler Rounds Prosecutor: Myron Gabbert
4/12/2011	PETN	JAN	Verified Amended Petition for Post-Conviction Relief
	AFFD	JAN	Petitioner's Second Affidavit in Support of Post-Conviction Relief
4/25/2011	ANSW	JAN	Answer (Prosecutor)
6/14/2011	AFFD	JAN	Affidavit of Tyler S Rounds (attorney fees for Feb, Mar, April, May) \$630
7/18/2011	ORDR	JAN	Order for Payment of Attorney Fees (Feb, Mar, April, May) \$630.00
10/17/2011	AFFD	JAN	Affidavit of tyler S Rounds (attorney fees for June - September) \$154
10/18/2011	NOHG	JAN	Notice Of Hearing - Review
	HRSC	JAN	Hearing Scheduled (Review Hearing 11/04/2011 09:30 AM) Post Conviction Relief
10/19/2011	ORDR	JAN	Order for Payment of attorney Fees (June - September) \$154
11/4/2011	HRHD	JAN	Hearing result for Review Hearing scheduled on 11/04/2011 09:30 AM: Hearing Held Post Conviction Relief

Gregory Scott McAmis, Plaintiff vs State Of Idaho, Defendant

Date	Code	User	Judge
11/4/2011	CMIN	JAN	Court Minutes Hearing type: Review Hearing Hearing date: 11/4/2011 Time: 9:58 am Courtroom: Court reporter: Minutes Clerk: JAN Tape Number: Party: Gregory McAmis, Attorney: Tyler Rounds Prosecutor: Myron Gabbert Bradly S Ford
	HRSC	JAN	Hearing Scheduled (Pretrial Conference 01/06/2012 10:30 AM) Post Conviction Relief Bradly S Ford
	HRSC	JAN	Hearing Scheduled (Evidentiary 02/02/2012 09:00 AM) Post Conviction Relief Bradly S Ford
12/20/2011	AFFD	JAN	Affidavit of Tyler S Rounds Bradly S Ford
12/21/2011	ORDR	JAN	Order for Payment of Attorney Fees (October - November, 2011) \$483.00 Bradly S Ford
12/29/2011	STIP	JAN	Stipulation to Continue Pre-Trial Conference and Court Trial Bradly S Ford
1/4/2012	ORDR	JAN	Order to Continue Pre-Trial Conference and Court Trial Bradly S Ford
	CONT	JAN	Continued (Pretrial Conference 05/04/2012 09:30 AM) Post Conviction Relief Bradly S Ford
	CONT	JAN	Continued (Evidentiary 05/31/2012 09:00 AM) Post Conviction Relief Bradly S Ford
2/21/2012	AFFD	JAN	Affidavit of Tyler S Rounds Bradly S Ford
2/23/2012	ORDR	JAN	Order for Payment of Attorney Fees (December, 2011 - January, 2012) \$119 Bradly S Ford
3/13/2012	AFFD	JAN	Affidavit of Tyler S Rounds Bradly S Ford
3/14/2012	ORDR	JAN	Order for Payment of Attorney Fees - February, 2012 (\$182) Bradly S Ford
4/27/2012	ORDR	JAN	Order Vacating and Resetting Hearing Bradly S Ford
	CONT	JAN	Continued (Evidentiary 07/02/2012 09:00 AM) Post Conviction Relief Bradly S Ford
5/4/2012	HRHD	JAN	Hearing result for Pretrial Conference scheduled on 05/04/2012 09:30 AM: Hearing Held Post Conviction Relief Bradly S Ford
	ORDR	JAN	Order to Transport Bradly S Ford
	CMIN	JAN	Court Minutes Hearing type: Pretrial Conference Hearing date: 5/4/2012 Time: 9:07 am Courtroom: Court reporter: Minutes Clerk: JAN Tape Number: Party: Gregory McAmis, Attorney: Tyler Rounds Prosecutor: Myron Gabbert Bradly S Ford

Gregory Scott McAmis, Plaintiff vs State Of Idaho, Defendant

Date	Code	User	Judge
5/17/2012	AFFD	JAN	Affidavit of Tyler S Rounds Bradly S Ford
5/18/2012	ORDR	JAN	Order for Payment of Attorney Fees (April, 2012) \$539 Bradly S Ford
6/7/2012	CONT	JAN	Continued (Evidentiary 07/02/2012 11:00 AM) Post Conviction Relief Bradly S Ford
6/8/2012	AFFD	JAN	Affidavit of Tyler S Rounds Bradly S Ford
6/11/2012	ORDR	JAN	Order to Transport (change of time) Bradly S Ford
6/18/2012	ORDR	JAN	Order for Payment of attorney Fees (May, 2012) \$266 Bradly S Ford
6/25/2012	SUBR	JAN	Subpoena Returned - Robin James Bradly S Ford
7/2/2012	CONT	JAN	Continued (Evidentiary 08/03/2012 11:00 AM) Post Conviction Relief Bradly S Ford
	CMIN	JAN	Court Minutes Hearing type: Evidentiary Hearing date: 8/14/2012 Time: 2:01 pm Courtroom: Court reporter: Minutes Clerk: JAN Tape Number: Party: Gregory McAmis, Attorney: Tyler Rounds Prosecutor: Myron Gabbert Bradly S Ford
7/9/2012	ORDR	JAN	Order to Transport (8-3-2012 at 11:00 am) Bradly S Ford
7/10/2012	AFFD	JAN	Affidavit of Tyler S Rounds Bradly S Ford
7/17/2012	ORDR	JAN	Order for Payment of Attorney Fees (June, 2012) \$217 Bradly S Ford
8/1/2012	AFFD	JAN	Affidavit of Tyler S Rounds Bradly S Ford
8/3/2012	CTST	JAN	Hearing result for Evidentiary scheduled on 08/03/2012 11:00 AM: Court Trial Started Post Conviction Relief Bradly S Ford
	ADVS	JAN	Case Taken Under Advisernent Bradly S Ford
	CMIN	JAN	Court Minutes Hearing type: Evidentiary Hearing date: 8/3/2012 Time: 9:39 am Courtroom: Court reporter: Minutes Clerk: JAN Tape Number: Party: Gregory McAmis, Attorney: Tyler Rounds Prosecutor: Myron Gabbert Bradly S Ford
	COMM	JAN	Commitment - Held To Answer Bradly S Ford
	ORDR	JAN	Order for Payment of Attorney fees (July, 2012) \$497 Bradly S Ford
9/14/2012	AFFD	VIANNE	Affidavit Of Tyler S. Rounds Bradly S Ford
9/20/2012	ORDR	TARA	Order Granting Post-Conviction Relief Bradly S Ford

4

Date: 12/5/2012

Third Judicial District Court - Adams County

User: TARA

Time: 11:09 AM

ROA Report

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Case: CV-2010-0002655 Current Judge: Bradley S Ford
Gregory Scott McAmis, Plaintiff vs State Of Idaho, Defendant

Gregory Scott McAmis, Plaintiff vs State Of Idaho, Defendant

Date	Code	User		Judge
9/20/2012	CDIS	TARA	Civil Disposition entered for: McAmis, Gregory Scott, Subject. Filing date: 9/20/2012	Bradly S Ford
	STAT	TARA	STATUS CHANGED: Closed	Bradly S Ford
	DEOP	TARA	Decision Or Opinion	Bradly S Ford
9/21/2012	ORDR	TARA	Order To Transport	Bradly S Ford
9/28/2012	JDMT	TARA	Judgment	Bradly S Ford
10/3/2012	AFFD	JAN	Affidavit of Tyler S Rounds	Bradly S Ford
10/5/2012	ORDR	TARA	Order for Payment of Attorney Fees (August 2012) \$742.00	Bradly S Ford
	ORDR	TARA	Order for Payment of attorney Fees (September 2012) \$399.00	Bradly S Ford
10/10/2012	NTOA	TARA	Notice Of Appeal	Bradly S Ford
	MOTN	TARA	Motion For Appointment Of State Appellate Public Defender	Bradly S Ford
	APSC	TARA	Appealed To The Supreme Court	Bradly S Ford
	STAT	TARA	STATUS CHANGED: Inactive	Bradly S Ford
10/16/2012	ORDR	TARA	Order Appointing State Appellate Public Defender in Direct Appeal	Bradly S Ford
11/14/2012	AFFD	TARA	Affidavit of Tyler Rounds	Bradly S Ford
	ORDR	TARA	Order for Payment of Attorney Fees	Bradly S Ford

Inmate Name Greg McAnis
 IDOC No. 85328 IFCWC
 Address 3355 Ramon Lier Ave
Idaho Falls ID

FILED

SEP 28 2010 4:30pm

SHERRY WARD, CLERK

Sherry Ward

Petitioner

IN THE DISTRICT COURT OF THE 2 JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

_____	)	Case CV-2010-2655
	)	Case No. CR-2006-0006057-FE
Petitioner,)	
	)	PETITION AND AFFIDAVIT
vs.	)	FOR POST CONVICTION
	)	RELIEF
_____)	
)	
Respondent.)	
_____)	

The Petitioner alleges:

1. Place of detention if in custody: IFCWC
2. Name and location of the Court which imposed judgement/sentence: ADAMS
County Court, Council ID
3. The case number and the offense or offenses for which sentence was imposed:
 - (a) Case Number: CR-2006-0006057-FE
 - (b) Offense Convicted: Grand theft
4. The date upon which sentence was imposed and the terms of sentence:
 - a. Date of Sentence: 7-07-2008
 - b. Terms of Sentence: 5-Fixed 6-IND

5. Check whether a finding of guilty was made after a plea:

☒ Of guilty ☐ Of not guilty

6. Did you appeal from the judgment of conviction or the imposition of sentence?

☒ Yes ☐ No

If so, what was the Docket Number of the Appeal? _____

7. State concisely all the grounds on which you base your application for post conviction relief: (Use additional sheets if necessary.)

(a) Ineffective Counsel

(b) Prosecution Breached Plea agreement

(c) _____

8. Prior to this petition, have you filed with respect to this conviction:

a. Petitions in State or Federal Court for habeas corpus? _____

b. Any other petitions, motions, or applications in any other court? _____

c. If you answered yes to a or b above, state the name and court in which each petition, motion or application was filed:

9. If your application is based upon the failure of counsel to adequately represent you, state concisely *and in detail* what counsel failed to do in representing your interests:

(a) Promised me that Judge verbally agreed
to plea agreement

(b) Promised me the state would stand
silent

(c) Promised to ask for Probation
then asked for Prison - would like to consult law
firm for additional grounds

10. Are you seeking leave to proceed in forma pauperis, that is, requesting the

proceeding be at county expense? (If your answer is "yes", you must fill out a

Motion to Proceed in Forma Pauperis and supporting affidavit.)

☐ Yes ☒ No

11. Are you requesting the appointment of counsel to represent you in this case? (If your answer is "yes", you must fill out a Motion for the Appointment of Counsel and supporting affidavit, as well as a Motion to Proceed In Forma Pauperis and supporting affidavit.)

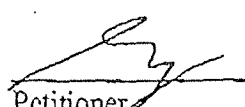
☐ Yes ☐ No

12. State specifically the relief you seek:

Follow plea agreement ^{OR} 4 years fixed
no IND ^{OR} give back plea


13. This Petition may be accompanied by affidavits in support of the petition. (Forms for this are available.)

DATED this 26 day of September, 2010.


Petitioner

STATE OF IDAHO)
) ss
County of Adams)

GREG MCAMIS, being sworn, deposes and says that the party is the Petitioner in the above-entitled appeal and that all statements in this PETITION FOR POST CONVICTION RELIEF are true and correct to the best of his or her knowledge and belief.


Petitioner

SUBSCRIBED AND SWORN and AFFIRMED to before me this ____ day of

_____, 20____.

(SEAL)

Notary Public for Idaho

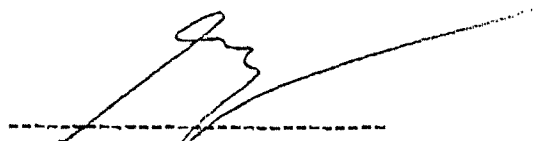
Commission expires: _____

AFFIDAVIT

(Adams county)

In the time i was incarcerated in canyon county i intended to go to trial, then on the day of jury selection the state offered a plea agreement saying they knew it was a mistake and would release me right away, and if i made restitution they would reduce the charge to a misdemeanor, they also told me they talked to Adams county and they would make the same offer, I signed the plea agreement and was released to Adams county, who then did not follow what i was promised and asked for several continuances and held me under a persistent violator act that i am not eligible for. I was arrested at eighteen for burglary and the charges were dropped. I have no prior felony convictions, and have never been to prison till now. and then after many months on the day of trial the state made an offer to match the plea agreement from canyon county as i was promised many months before, they also promised to stand silent at sentence and did not honor that promise. I was also told by my attorney that the judge personally told him he would go along with the states plea agreement, and then at sentence the state asked for prison and did not stand silent, and when i pressed my attorney to object all he said was your honor the state promised to stand silent and that is not what we witnessed, and then after a long silence he said but go ahead and sentence him. then my attorney asked for prison with retained jurisdiction instead of the plea agreement, I objected again and he told me to remain silent that the judge was going to follow the agreement but instead gave me 5 fixed and 6 indeterminate it is clear from the court minutes and audio that the prosecution offered me matching plea agreements to get me to plead guilty then breached these agreements at sentencing. I know i put myself in this position, and my crime was about breaking promises i just ask that my plea be given back so the facts can be heard, or that the plea agreement be followed.

sincerely



GREGORY McAMIS

FILED

OCT 13 2010 12:45 PM

SHERRY WARD, CLERK

Sherry Ward

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

GREGORY SCOTT McAMIS,

Petitioner,

-vs-

STATE OF IDAHO,

Respondent.

)
)
) ORDER REGARDING COURT
) APPOINTMENT OF ATTORNEY

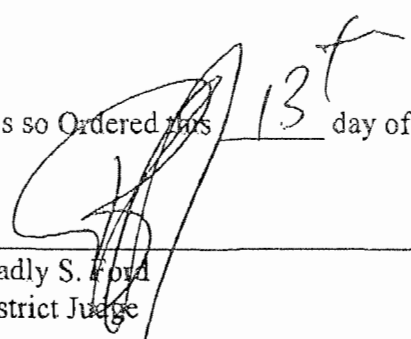
) Case No. CV10-2655
)
)
)
)
)
)
)
)
)
)

The petitioner, Gregory Scott McAmis, filed a Petition for Post Conviction Relief pursuant to Idaho Code §19-4902.

The petition has not been given under oath and is confusing on its face. It is not clear to the court if the petitioner is or is not requesting the assistance of court appointed counsel.

The petitioner shall notify the court in writing by November 12, 2010 if he is requesting the court to appoint an attorney to represent him in this proceeding. If the petitioner is requesting the court to appoint an attorney to assist him, he shall submit the request to the court in writing along with a sworn affidavit of indigency by November 12, 2010.

It is so Ordered this 13th day of October, 2010.


Bradly S. Ford
District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that on 13 day of October, 2010, s/he served a true and correct copy of the original of the foregoing ORDER REGARDING COURT APPOINTED COUNSEL on the following individuals in the manner described:

- upon the petitioner:

Gregory Scott McAmis #85328
Idaho Falls Community Work Center
3955 Bombardier Avenue
Idaho Falls, Idaho 83402

- upon Adams County Public Defender

Tim Felton
Attorney at Law
P.O. Box 267
Weiser, Idaho 83672

- upon Adams County Prosecuting Attorney

Mryon Dan Gabbert Jr.
Prosecuting Attorney
Adams County Courthouse
P.O. Box 48
Council, Idaho 83612

and/or when s/he deposited each a copy of the foregoing ORDER in the U.S. Mail with sufficient postage to individuals at the addresses listed above.

SHERRY WARD, Clerk of the Court

By: 

Deputy Clerk of the Court

Third Judicial District Court -- Adams County

Court Minutes

CV-2010-0002655

CR-2006-6057

Gregory Scott McAmis, Plaintiff vs State Of Idaho, Defendant

Hearing type: Status

Hearing date: 12/3/2010

Judge: Bradly S Ford

Time: 10:50 am – 10:56 am

Court reporter: Yvonne Hyde Gier (telephone) Minutes Clerk: JAN ~~W~~

Party: Gregory McAmis

Prosecutor: Myron Gabbert

1050	<p>This being the time set for Status Hearing, the Defendant was present in custody of the Adams County Sheriff. Court questioned the Defendant regarding his lack of response to the Court's order. Defendant noted that he had no funds and was in transport and did not receive the order.</p> <p>Defendant was sworn and questioned by the Court regarding indigence. Court appointed Tim Felton to represent the Defendant. Mr. Felton, who was present in the courtroom, objected to the appointment, stating that he had represented the Defendant's wife and had not been paid.</p>
1055	<p>Court will appoint conflict attorney. Defendant was remanded to the custody of the Adams County Sheriff for transport back to SICI.</p>

THIRD JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF ADAMS
PO. BOX 48/ 201 INDUSTRIAL AVE
COUNCIL, IDAHO 83612

FILED

DEC - 7 2010 4:15pm

SHERRY WARD, CLERK

GREGORY SCOTT MCAMIS,
Petitioner,

Case No: CV-2010-0002655

vs

ORDER APPOINTING ATTORNEY
(POST CONVICTION RELIEF)

STATE OF IDAHO,
Respondent.

The Petitioner filed with the Court his Petition for Post Conviction Relief on September 28, 2010

The Court reviewed the petitioner's criminal file in regard to the above named Defendant and found the Defendant to be indigent in this matter, and

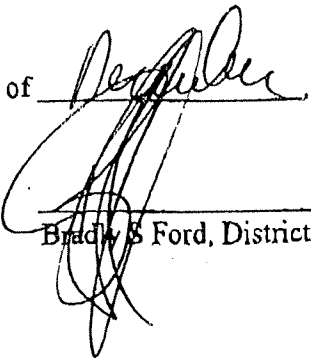
NOW THEREFORE, IT IS HEREBY ORDERED that Kelly Whiting located at 425 S Whitley Dr, Suite 6, Fruitland, ID 83619 telephone (208)452-7726 be and is hereby appointed to represent the above named Defendant on his post conviction proceeding in the above entitled matter. He may advise the Court within seven days if he wishes to decline the appointment.

This matter is set for Status Conference on

January 7th, 2011 at 10:00 AM

IT IS FURTHER ORDERED that an amended petition be filed together with any additional information for the Court's consideration within thirty (30) days.

Dated this 7 day of December, 2010.


Brady S Ford, District Judge

CERTIFICATE OF SERVICE

State of Idaho,)
) ss
County of Adams)

I hereby certify that a true and correct copy of the foregoing Order was forwarded to the following persons this 7 day of December, 2010;

Myron Dan Gabbert
Adams County Prosecutor
Council, ID 83612
Hand delivered

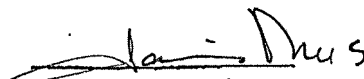
Kelly R Whiting
Attorney at Law
425 S Whitley Dr, Suite 6
Fruitland, ID 83619
Fax (208)452-7727

Greg McAmis, #85328
3355 Bombardier Avenue
Idaho Falls, ID 83402

Either by depositing the same in the U.S. mail, Fax, or by personal service.

Dated this 7 day of December, 2010.

Sherry Ward, Clerk
Clerk of the District Court


Deputy Clerk

FILED

DEC 21 2010

SHERRY WARD, CLERK
Sherry Ward

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

GREGORY SCOTT McAMIS,)	
)	
Petitioner,	)	AMENDED ORDER APPOINTING
	)	ATTORNEY
)	
-vs-	)	Case No. CV10-2655
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

The petitioner filed with the Court his Petition for Post Conviction. The Court reviewed the petitioner's criminal file in regard to the above named defendant and found the defendant to be indigent in this matter.

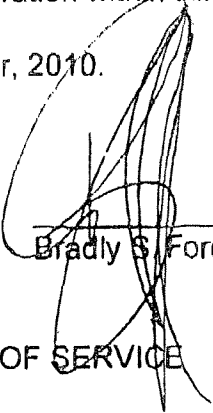
The Court held a hearing with petitioner present by telephone and appointed Kelly Whiting as counsel for the petitioner.

Mr. Whiting filed a Notice of Denial of Appointment as Attorney for the petitioner.

NOW THEREFORE, IT IS HEREBY ORDERED that Tyler Rounds, 717 S. Kimball, Caldwell, Idaho 83605 at 208-459-6795 be and is hereby appointed to represent the above named petitioner on his post conviction proceeding in the above entitled matter.

IT IS FURTHER ORDERED that an amended petition be filed together with any additional information for the Court's consideration within thirty (30) days.

Dated this 20th day of December, 2010.



Brady S. Ford, District Judge

CERTIFICATE OF SERVICE

STATE OF IDAHO,)
) ss
COUNTY OF ADAMS)

I hereby certify that a true and correct copy of the foregoing Order was forwarded to the following persons this 22 day of December, 2010:

Myron Dan Gabbert, Jr.
Prosecutor
Council, Idaho 83612


Tyler Rounds
Attorney at Law
717 S. Kimball
Caldwell, Idaho 83605

Gregory Scott McAmis #85328
South Idaho Correctional Institution
P.O. Box 8509
Boise, Idaho 83707

either by depositing the same in the U.S. mail, first class postage prepaid, or by personal service.

Dated this 22 day of December, 2010.

Sherry Ward, Clerk
Clerk of District Court



Deputy Clerk

FILED

DEC 21 2010

SHERY WARD, CLERK

Sherry Ward

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

GREGORY SCOTT McAMIS,)	
)	
Petitioner,	)	ORDER VACATING HEARING AND
	)	NOTICE OF HEARINGS
)	
-vs-	)	Case No. CV10-2655
)	
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

The Court appointed Tyler Rounds as counsel for the above-named petitioner on December 20, 2010 and allowed counsel thirty (30) days to file an amended petition, now orders that the status conference presently scheduled for January 7, 2011 at 10:00 a.m. be vacated.

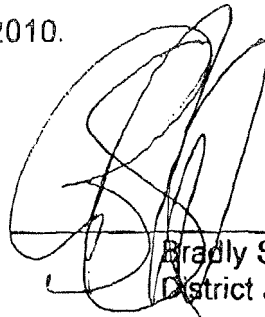
IT IS FURTHER ORDERED that the above-entitled case be, and the same hereby is, set for pretrial/status conference on the Petition for Post Conviction at Council, Adams County, Idaho, to commence at 10:00 a.m. on the 4th day of February, 2011, before the Honorable Bradly S. Ford, District Judge.

IT IS FURTHER ORDERED that the above-entitled case be, and the same hereby is, set for an evidentiary hearing on the Petition for Post Conviction at Council, Adams County, Idaho to commence at 1:00 p.m. on the 4th day of March, 2011, before the

Honorable Bradly S. Ford, District Judge.

Defense counsel shall prepare a transport order for each hearing in this matter.

Dated this 21st day of December, 2010.



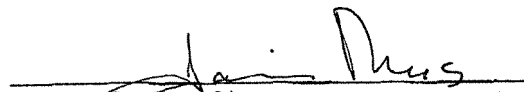
Bradly S. Ford
District Judge

CERTIFICATION OF MAILING

I hereby certify that copies of the foregoing Notice were forwarded to the following persons on the 22 day of December, 2010:

Myron Dan Gabbert, Jr.
Prosecutor
Council, Idaho 83612

Tyler Rounds
Attorney at Law
717 S. Kimball
Caldwell, Idaho 83605


Deputy Clerk

LOVAN ROKER DARRINGTON & ROUNDS, P.C.

GREGG E. LOVAN- ISB No. 1762

MATTHEW J. ROKER- ISB No. 4835

T. SHANE DARRINGTON - ISB No. 6461

TYLER S. ROUNDS - ISB No. 7876

Attorneys at Law

717 S. Kimball Avenue, Suite 200

Caldwell, Idaho 83605

Telephone: (208) 459-6795

Facsimile: (208) 459-6908

FILED

DEC 23 2010 3:00 PM

SHERY WARD, CLERK

Sherry Ward

Attorney for Petitioner

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

GREGORY MCAMIS,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

CASE NO. CV10-2655

ORDER TO TRANSPORT

IT APPEARING that the above-named Petitioner is in the custody of the South Idaho Correctional Institution and that it is necessary that GREGORY MCAMIS be brought before the Honorable Bradley S. Ford in the Judicial Court at 201 Industrial Ave., Council, Idaho for his Court date on the 4TH day of February, 2011 at the hour of 10:00 o'clock a.m.;

IT IS THEREFORE ORDERED that the Adams County Sheriff bring the Petitioner from the South Idaho Correctional Institution to Adams County Courthouse at said time and on said date;

IT IS FURTHER ORDERED that immediately following said court date the Sheriff return said Petitioner to the custody of the South Idaho Correctional Institution;

IT IS FURTHER ORDERED that the South Idaho Correctional Institution release the said Petitioner to the Adams County Sheriff, for the purpose of the aforementioned court appearance; and

ORDER TO TRANSPORT - 1

20

IT IS FURTHER ORDERED that the Clerk of this Court serve a copy hereof upon the Adams County Sheriff's Department forthwith and certify the same.

DATED: December 23rd, 2010.


BRADLEY S. FORD
District Judge

FILED

JAN 14 2011 1:00PM

SHERRY WARD, CLERK
Sherry Ward

LOVAN ROKER DARRINGTON & ROUNDS, P.C.
GREGG E. LOVAN- ISB No. 1762
MATTHEW J. ROKER- ISB No. 4835
T. SHANE DARRINGTON - ISB No. 6461
TYLER S. ROUNDS - ISB No. 7876
Attorneys at Law
717 S. Kimball Avenue, Suite 200
Caldwell, Idaho 83605
Telephone: (208) 459-6795
Facsimile: (208) 459-6908

Attorney for Petitioner

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

GREGORY MCAMIS,)	
	)	CASE NO. CV10-2655
Petitioner)	
vs.	)	ORDER TO RE-EXTEND TIME
	)	TO FILE AMENDED PETITION AND
STATE OF IDAHO,	)	VACATE STATUS CONFERENCE
)	
Respondent.)	
_____)	

The Court, having considered the Petitioner's *Ex Parte Motion to Re-extend Time to File Amended Petition and Vacate Status Conference*, and good cause appearing therefore,

IT IS HEREBY ORDERED, AND THIS DOES ORDER, that Petitioner's Counsel is given 60 days from today's date to file Amended Petition if needed and that the Status Conference scheduled for February 4, 2011 at 9:00 a.m. be vacated and continued to April 1, 2011 at 9:00 a.m., before the Honorable Ford, at the Courthouse in the City of Council, State of Idaho.

DATED: January 14th, 2011.

[Signature]
BRADLY FORD
District Judge


ORDER-1

22

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order was forwarded to the following persons on this 18 day of January 2011, facsimile to MYRON DAN GABBERT, JR, at (208) 253-4880, Council Idaho; and Tyler S. Rounds, at (208) 459-6908, Caldwell, Idaho and mailed to GREGORY MCAMIS Inmate #85328 c/o SICI PO BOX 8509, Boise, ID 83707.

CLERK OF THE DISTRICT COURT


Deputy Clerk of the Court

FILED

JAN 14 2011 1:00 PM

SHERRY WARD, CLERK
Sherry Ward

LOVAN ROKER DARRINGTON & ROUNDS, P.C.

GREGG E. LOVAN- ISB No. 1762

MATTHEW J. ROKER- ISB No. 4835

T. SHANE DARRINGTON - ISB No. 6461

TYLER S. ROUNDS - ISB No. 7876

Attorneys at Law

717 S. Kimball Avenue, Suite 200

Caldwell, Idaho 83605

Telephone: (208) 459-6795

Facsimile: (208) 459-6908

Attorney for Petitioner

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

GREGORY MCAMIS,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

CASE NO. CV2010-2655

ORDER FOR PREPARATION OF
TRANSCRIPT

IT IS HEREBY ORDERED, AND THIS DOES ORDER, that a transcript of the
hearings on the following dates in case number CR2006-6057:

March 2, 2007

Preliminary Hearing.

July 7, 2008

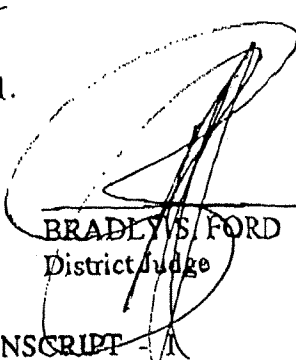
Guilty Plea and Arraignment.

October 9, 2008

Sentencing.

Is to be prepared at the expense of the County.

DATED: January 13, 2011.


BRADLEY S. FORD
District Judge

ORDER FOR PREPARATION OF TRANSCRIPT - 1

25

FILED

MAR - 2 2011 3:45pm

SHERRY WARD, CLERK



LOVAN ROKER & ROUNDS, P.C.
GREGG E. LOVAN- ISB No. 1762
MATTHEW J. ROKER- ISB No. 4835
TYLER S. ROUNDS - ISB No. 7876
Attorneys at Law
717 S. Kimball Avenue, Suite 200
Caldwell, Idaho 83605
Telephone: (208) 459-6795
Facsimile: (208) 459-6908

Attorney for Petitioner

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

GREGORY MCAMIS,)	
	)	CASE NO. CV10-2655
Petitioner)	
vs.	)	ORDER TO RE-EXTEND TIME
	)	TO FILE AMENDED PETITION
STATE OF IDAHO,)	
)	
Respondent.)	

The Court, having considered the Petitioner's *Ex Parte Motion to Re-extend Time to File Amended Petition*, and good cause appearing therefore,

IT IS HEREBY ORDERED, AND THIS DOES ORDER, that Petitioner's Counsel is given 60 days from today's date to file Amended Petition if needed.

DATED: March 2nd, 2011.
BRADLY FORD
District Judge

ORDER-1

710

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order was forwarded to the following persons on this 2 day of March 2011, ^{hand delivered} facsimile to MYRON DAN GABBERT, JR, at (208) 253-4880, Council Idaho; and Tyler S. ^{Fox} Rounds, at (208) 459-6908, Caldwell, Idaho and mailed to GREGORY MCAMIS Inmate #85328 c/o SICI PO BOX 8509, Boise, ID 83707.

SHERRY WARD
CLERK OF THE DISTRICT COURT


Deputy Clerk of the Court

Third Judicial District Court -- Adams County

Court Minutes

CV-2010-0002655

Gregory Scott McAmis, Plaintiff vs State Of Idaho, Defendant

Hearing type: Status

Hearing date: 4/1/2011

Judge: Bradly S Ford

Time: 9:14 am – 9:18 am

Court reporter: Yvonne Hyde Gier

Minutes Clerk: JAN

Party: Gregory McAmis, Attorney: Tyler Rounds

Prosecutor: Myron Gabbert

914	<p>This being the time set for status hearing, the Defendant was not present but was represented by his Court-appointed Attorney, Tyler Rounds. Mr. Rounds indicated that the Defendant had no objection to proceeding with this hearing in his absence.</p> <p>Defense noted that it had drafted an amended Petition in this matter and advised the Court that Defendant's Canyon County Post Conviction case CV-2010-10042 was scheduled for an evidentiary hearing April 22.</p>
918	<p>Court requested that the amended Petition be filed within 30 days and the State's response be timely filed thereafter.</p>

LOVAN ROKER & ROUNDS, P.C.
 GREGG E. LOVAN- ISB No. 1762
 MATTHEW J. ROKER- ISB No. 4835
 TYLER S. ROUNDS - ISB No. 7876
 Attorneys at Law
 717 S. Kimball Avenue, Suite 200
 Caldwell, Idaho 83605
 Telephone: (208) 459-6795
 Facsimile: (208) 459-6908

Attorneys for Petitioner

FILED

APR 12 2011 3:00pm

SHERRY WARD, CLERK

[Signature]

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

GREGORY MCAMIS,)	
	)	CASE NO. CV2010-2655
Petitioner,)	
vs.	)	VERIFIED AMENDED PETITION FOR
	)	POST-CONVICTION RELIEF
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

COMES NOW, the Petitioner in the above-entitled action, by and through his attorney of record, TYLER S. ROUNDS, and hereby submits this Amended Petition for Post-Conviction Relief, and alleges:

1. Petitioner incorporates by this reference each of the allegations and claims contained in his *pro se* Petition filed on or about September 28, 2010.

2. By way of this amendment, Petitioner includes the further claim of ineffective assistance of counsel as follows:

a. The Petitioner was represented by Jonathon D. Hallin in the underlying criminal matter. During the change of plea hearing on July 7, 2008, the plea was reach as part of a plea agreement with the prosecutor, Myron Dan Gabbert. The plea agreement reach was as follows: 1) Mr. McAmis would plead guilty to one count of grand theft, the State would move to dismiss the habitual offender enhancement, and the State would agree not to file charges against Mr. McAmis relating to a failure to appear charge; 2) Both parties would recommend a sentence of two-to-five-years which would be suspended; 3) Both parties would ask that the sentence

would be concurrent with Canyon County; 4) Mr. McAmis would pay restitution and court costs; and 5) Mr. McAmis could ask for a withheld judgment. (July 7, 2008 Tr. at 4:12-5:11).

However, at the sentencing hearing the prosecutor, Myron Gabbert, did not recommend a suspended sentence of two-to-five-years, instead he informed the judge that the presentence report recommended incarceration and it was up to the judge to prevent this type of crime from happening again. (Oct. 9, 2008, Tr. at 38:10-38:24). In response to the prosecutor's position, Mr. Hallin simply stated, "Well, Your Honor, apparently I misunderstood the plea—the nature of the plea discussions with the State. It's my understanding that the State would honor my request for a sentence of two-to-five years, and they would recommend a—not make recommendations as to incarceration or whether it be suspended. . . . Regardless, Your Honor, this court can make its own determination in this matter." (Oct. 9, 2008, Tr. at 39:2-39:15)

Before sentence was imposed, the Honorable Stephen W. Drescher indicated that based on certain factors *including the presentation of the prosecutor* he was sentencing Mr. McAmis to a unified term of eleven years, the first five fixed. (Oct. 9, 2008, Tr. at 50:20-51:6)

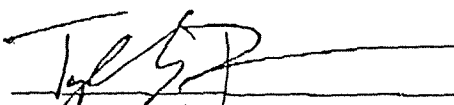
Mr. Hallin's response to the position the prosecutor took during his sentence recommendation was deficient and constitutes ineffective assistance of counsel. It was also deficient to stand silent when the Court indicated it was considering the presentation of the prosecutor in making the sentencing determination. *Huck v. State*, 124 Idaho 155 (1993). The Petitioner was prejudiced by the deficient performance because, *inter alia*, of the failure of his defense counsel to appropriately respond to the breach of the plea agreement by requesting that the plea be set aside or for other appropriate relief. *Id.* (Trial Tr. at pp 455 ln 2-22).

3. The Court should vacate the conviction in the underlying criminal case and have the matter set for a new trial.

CERTIFICATE OF SERVICE: The undersigned hereby certifies that a true and correct copy of the foregoing instrument was sent via fax to MYRON DAN GABBERT, JR. at (208) 253-4880 this date.

DATED this 12 day of April, 2011.

LOVAN ROKER & ROUNDS, P.C.




TYLER S. ROUNDS
Attorneys for Petitioner

STATE OF IDAHO)
)SS
COUNTY OF ADA)

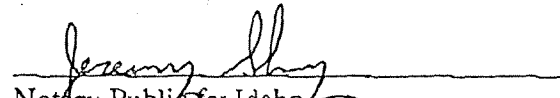
I, GREGORY MCAMIS, being first duly sworn on oath, depose and state that I am the Petitioner in the above-captioned matter and have read the foregoing document, know the contents thereof, and hereby verify that the facts therein stated are true and accurate to the best of my knowledge, information and belief.

DATED This 7 day of April, 2011.


GREGORY MCAMIS

SUBSCRIBED AND SWORN To before me this 7 day of April, 2011.




Notary Public for Idaho
Residing at:
My Commission Expires:

FILED

APR 12 2011 3:00pm

SHERRY WARD, CLERK

Sherry Ward

LOVAN ROKER & ROUNDS, P.C.
 GREGG E. LOVAN- ISB No. 1762
 MATTHEW J. ROKER- ISB No. 4835
 TYLER S. ROUNDS - ISB No. 7876
 Attorneys at Law
 717 S. Kimball Avenue, Suite 200
 Caldwell, Idaho 83605
 Telephone: (208) 459-6795
 Facsimile: (208) 459-6908

Attorneys for Petitioner

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

GREGORY MCAMIS,)	
	)	CASE NO. CV2010-2655
Petitioner,)	
vs.	)	PETITIONER'S SECOND AFFIDAVIT IN
	)	SUPPORT OF POST-CONVICTION RELIEF
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

STATE OF IDAHO)
 :ss
 County of ADA)

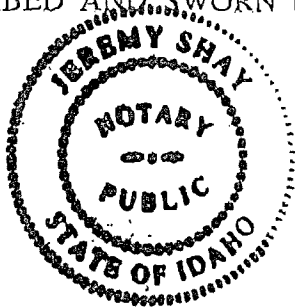
GREGORY MCAMIS, being first duly sworn, and upon personal knowledge of the facts and circumstances recited herein, deposes and says that:

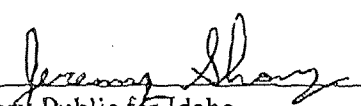
1. I am the Petitioner in the above captioned case and have personal knowledge as to the facts and circumstances surrounding this matter.
2. Attached as "Exhibit A" is a true and correct copy of an affidavit I had previously prepared in connection with this case but did not have notarized.
3. The conviction in the underlying criminal case should be vacated and the matter set for a new trial.

DATED This 7 day of April, 2011.


GREGORY MCAMIS

SUBSCRIBED AND SWORN to before me this 7 day of April, 2011.

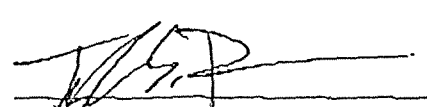



Notary Public for Idaho
Residing at: 5101-CWC
My Commission Expires: 3-24-2014

CERTIFICATE OF SERVICE: The undersigned hereby certifies that a true and correct copy of the foregoing instrument was sent via fax to MYRON DAN GABBERT, JR. at (208) 253-4880 this date.

DATED: April 12, 2011.

LOVAN ROKER & ROUNDS, P.C.


TYLER S. ROUNDS
Attorneys for Petitioner

AFFIDAVIT

(Adams county)

In the time i was incarcerated in canyon county i intended to go to trial, then on the day of jury selection the state offered a plea agreement saying they knew it was a mistake and would release me right away, and if i made restitution they would reduce the charge to a misdemeanor, they also told me they talked to Adams county and they would make the same offer, I signed the plea agreement and was released to Adams county, who then did not follow what i was promised and asked for several continuances and held me under a persistent violator act that i am not eligible for. I was arrested at eighteen for burglary and the charges were dropped. I have no prior felony convictions, and have never been to prison till now. and then after many months on the day of trial the state made an offer to match the plea agreement from canyon county as i was promised many months before, they also promised to stand silent at sentence and did not honor that promise. I was also told by my attorney that the judge personally told him he would go along with the states plea agreement, and then at sentence the state asked for prison and did not stand silent, and when i pressed my attorney to object all he said was your honor the state promised to stand silent and that is not what we witnessed, and then after a long silence he said but go ahead and sentence him. then my attorney asked for prison with retained jurisdiction instead of the plea agreement, I objected again and he told me to remain silent that the judge was going to follow the agreement but instead gave me 5 fixed and 6 indeterminate it is clear from the court minutes and audio that the prosecution offered me matching plea agreements to get me to plead guilty then breached these agreements at sentencing. I know i put myself in this position, and my crime was about breaking promises i just ask that my plea be given back so the facts can be heard, or that the plea agreement be followed.

sincerely



GREGORY McAMIS

EXHIBIT
[A]

34

FILED

APR 25 2011 4:55 PM
Vannak Vann
SEAN WARD, CLERK

MYRON DAN GABBERT
Prosecuting Attorney
Adams County, Idaho
P. O. Box 546
Council, Idaho 83612
(208) 253-6896
ISB # 1174

Attorney for Respondent

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

STATE OF IDAHO)	
)	
Plaintiff,	)	Case No. CV10-2655
)	
vs.	)	ANSWER
)	
GREGORY SCOTT MCAMIS,)	
)	
Defendant.)	

The State of Idaho responds to Petitioner's Pleadings as follows:

I

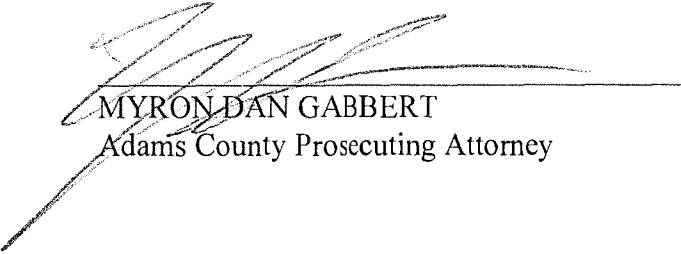
Each and every allegation of Petitioner's Pleadings are denied except as specifically admitted herein.

II

Respondent asserts that the record of Respondent's case in Adams County mandates that the
ANSWER - 1

Petition be denied.

DATED this 25th day of April, 2011.

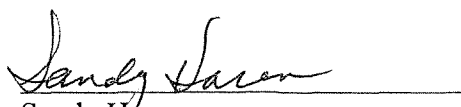


MYRON DAN GABBERT
Adams County Prosecuting Attorney

CERTIFICATE OF MAILING

I HEREBY CERTIFY, That on this 25th day of April, 2011, a true and correct copy of the foregoing **ANSWER** was mailed by U.S. Mail, with postage prepaid thereon to the following person(s):

Tyler S. Rounds
Attorney At Law
717 S. Kimball Avenue, Suite 200
Caldwell, ID 83605



Sandy Haren
Legal Secretary

Third Judicial District Court -- Adams County

Court Minutes

CV-2010-0002655

Gregory Scott McAmis, Plaintiff vs State Of Idaho, Defendant

Hearing type: Review Hearing

Hearing date: 11/4/2011

Judge: Bradly S Ford

Time: 9:54 am – 10:01 am

Court reporter: Debra Kreidler

Minutes Clerk: JAN *AK*

Party: Gregory McAmis, Attorney: Tyler Rounds

Prosecutor: Myron Gabbert

954	<p>This being the time set for Post Conviction Relief review hearing, the Plaintiff was not present but was represented by his attorney, Tyler Rounds.</p> <p>Mr. Rounds advised the Court that in a companion case in Canyon County the Post Conviction Relief was denied.</p> <p>Mr. Gabbert stated he was satisfied with his filed Answer. No motions were anticipated being filed.</p>
10:00	<p>Court set this for a PRETRIAL JANUARY 6, 2012, AT 10:30 AM, AND EVIDENTIARY FEBRUARY 2, 2012, AT 9:00 AM.</p> <p>Court will consider a telephone Pretrial Conference with no motions.</p>

FILED

JAN - 4 2012 11:00 AM

SHERRY WARD, CLERK

DEC 29 2011

LOVAN ROKER & ROUNDS, P.C.
GREGG E. LOVAN- ISB No. 1762
MATTHEW J. ROKER- ISB No. 4835
TYLER S. ROUNDS - ISB No. 7876
Attorneys at Law
717 S. Kimball Avenue, Suite 200
Caldwell, Idaho 83605
Telephone: (208) 459-6795
Facsimile: (208) 459-6908

Attorney for Petitioner

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

GREGORY MCAMIS,)	
	)	CASE NO. CV2010-2655
Petitioner,)	
vs.	)	ORDER TO CONTINUE PRE-TRIAL
	)	CONFERENCE AND COURT TRIAL
STATE OF IDAHO,)	
)	
Respondent.)	

IN CONSIDERATION of the parties' Stipulation to Continue Pre-Trial Conference and Court Trial, and being fully advised in the law and the premises, and good cause appearing therefore,

IT IS HEREBY ORDERED, AND THIS DOES ORDER, that the Petitioner's Pre-Trial Conference scheduled for January 6, 2012 at 10:30 a.m. be continued to May 4, 2012 at 9:30 a.m. and Court Trial scheduled for February 2, 2012 at 9:00 a.m. be continue to May 31, 2012 at 9:00 a.m., before the Honorable Ford, at the Courthouse in the City of Council State of Idaho.

DATED:

January 4th
December 1, 2011
2012

BRADLY A. FORD
District Judge

FILED

APR 27 2012 4:00pm

SHERRY WARD, CLERK

Sherry Ward

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

GREGORY SCOTT McAMIS,

Plaintiff,

vs.

STATE OF IDAHO,

Defendant.

)
) **CASE NO. CV-2010-2655**
)
)
) **ORDER VACATING AND**
) **RESETTING HEARING**
)
)
)
)
)
)

IT IS HEREBY ORDERED that the EVIDENTIARY HEARING scheduled for May 31, 2012, shall be VACATED and reset for MONDAY, JULY 2, 2012, at 9:00 A.M., to be heard at the Adams County Courthouse, Council, Idaho, before the Honorable Bradley S. Ford, District Judge.

Dated: April 27, 2012.

[Signature]

Bradly S. Ford
District Judge

CERTIFICATE OF SERVICE

STATE OF IDAHO,)
) ss
COUNTY OF ADAMS)

I HEREBY CERTIFY that a true and correct copy of the foregoing ORDER VACATING AND RESETTING HEARING was forwarded to the following:


Tyler S. Rounds
LOVAN ROKER & ROUNDS, P.C.
717 S Kimball, Ste 200
Caldwell, ID 83605 Fax 208-459-6908

Myron Dan Gabbert Jr.
ADAMS COUNTY PROSECUTOR'S OFFICE
PO Box 546
Council, ID 83612 Hand Delivery

Either by depositing the same in the U.S. mail, first class postage prepaid, or by personal service. Fax ✓ ✓

DATED this 27 day of April, 2012.

Sherry Ward
Clerk of the District Court


by Deputy Clerk of the Court

LOVAN ROKER & ROUNDS, P.C.
 MATTHEW J. ROKER-ISB No. 4835
 TYLER S. ROUNDS - ISB No. 7876
 Attorneys at Law
 717 S. Kimball Avenue, Suite 200
 Caldwell, Idaho 83605
 Telephone: (208) 459-6795
 Facsimile: (208) 459-6908

Attorney for Petitioner

FILED

MAY - 4 2012 9:20 AM

SHERRY WARD, CLERK

Sherry Ward

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

GREGORY MCAMIS,)	
	)	CASE NO. CV10-2655
Petitioner,)	
)	
vs.	)	ORDER TO TRANSPORT
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

IT APPEARING that the above-named Petitioner is in the custody of the Idaho Correctional Center and that it is necessary that GREGORY MCAMIS be brought before the Honorable Bradly S. Ford in the Judicial Court at 201 Industrial Ave., Council, Idaho for his Court date on the **2nd** day of **July, 2012 at the hour of 9:00 o'clock a.m.**;

IT IS THEREFORE ORDERED that the Adams County Sheriff bring the Petitioner from the South Idaho Correctional Institution to Adams County Courthouse at said time and on said date;


IT IS FURTHER ORDERED that immediately following said court date the Sheriff return said Petitioner to the custody of the South Idaho Correctional Institution;

IT IS FURTHER ORDERED that the South Idaho Correctional Institution release the said Petitioner to the Adams County Sheriff, for the purpose of the aforementioned court appearance; and

IT IS FURTHER ORDERED that the Clerk of this Court serve a copy hereof upon the Adams County Sheriff's Department forthwith and certify the same.

DATED:


April _____, 2012.



BRADLEY S. FORD
District Judge

Third Judicial District Court -- Adams County

Court Minutes

CV-2010-0002655

Gregory Scott McAmis, Plaintiff vs State Of Idaho, Defendant


Hearing type: Pretrial Conference

Hearing date: 5/4/2012

Judge: Bradly S Ford

Time: 9:07 am -- 9:19 am

Court reporter: none

Minutes Clerk: JAN 

Party: Attorney: Tyler Rounds by telephone

Prosecutor: Myron Gabbert

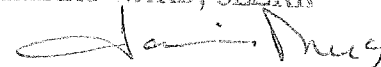
907	<p>This being the time set for Pretrial Conference, the Defendant had not been transported but was represented by his attorney, Tyler Rounds, by telephone.</p> <p>Court reviewed the case status and noted that the Court Reporter was not present. Court advised the parties that, according to the Administrative Rules, a Court Reporter was not required for pretrial conferences. Court also noted for the record that both attorneys had agreed to proceeding without the Court Reporter and waived the right to have a Court Reporter.</p> <p>Defense stated it was ready to proceed to trial and requested a stipulation to admission of the filed transcripts of the Change of Plea Hearing and Sentencing Hearing. Defense advised the Court of only one potential witness, Mr. McAmis. State stipulated to admission of the transcripts.</p>
910	<p>State advised the Court that it had two potential witnesses: the victim and himself. State noted that Deputy Prosecutor Richard Roats would be handling the Evidentiary Hearing.</p> <p>State then referred to a memo that it had prepared subsequent to the time of sentencing. Defense noted that it did not have the memo. After reviewing the file, the Court stated that the memo was not filed as part of the file.</p>
919	<p>Court questioned the attorneys regarding discovery, and noted that the Order to Transport had been signed and determined that the Canyon County Case Post Conviction Relief had been denied.</p>

LOVAN ROKER & ROUNDS, P.C.
 MATTHEW J. ROKER- ISB No. 4835
 TYLER S. ROUNDS - ISB No. 7876
 Attorneys at Law
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 Caldwell, Idaho 83605
 Telephone: (208) 459-6795
 Facsimile: (208) 459-6908

FILED

JUN 11 2012 8:15 AM

SHERRY WARD, CLERK



Attorney for Petitioner

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

GREGORY MCAMIS,)	
	)	CASE NO. CV10-2655
Petitioner,)	
)	
vs.	)	ORDER TO TRANSPORT
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

IT APPEARING that the above-named Petitioner is in the custody of the Idaho Correctional Center and that it is necessary that GREGORY MCAMIS be brought before the Honorable Bradley S. Ford in the Judicial Court at 201 Industrial Ave., Council, Idaho for his Court date on the 2nd day of July, 2012 at the hour of 11:00 o'clock a.m.;

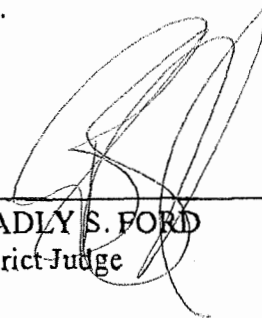
IT IS THEREFORE ORDERED that the Adams County Sheriff bring the Petitioner from the South Idaho Correctional Institution to Adams County Courthouse at said time and on said date;

IT IS FURTHER ORDERED that immediately following said court date the Sheriff return said Petitioner to the custody of the South Idaho Correctional Institution;

IT IS FURTHER ORDERED that the South Idaho Correctional Institution release the said Petitioner to the Adams County Sheriff, for the purpose of the aforementioned court appearance; and

IT IS FURTHER ORDERED that the Clerk of this Court serve a copy hereof upon the Adams County Sheriff's Department forthwith and certify the same.

DATED: June 12, 2012.



BRADLY S. FORD
District Judge

FILED

JUL - 9 2012 1:00 PM

SHERRY WARD, CLERK

Sherry Ward

LOVAN ROKER & ROUNDS, P.C.
 MATTHEW J. ROKER- ISB No. 4835
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 Telephone: (208) 459-6795
 Facsimile: (208) 459-6908

Attorney for Petitioner

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

GREGORY MCAMIS,)	
	)	CASE NO. CV10-2655
Petitioner,)	
)	
vs.	)	ORDER TO TRANSPORT
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

IT APPEARING that the above-named Petitioner is in the custody of the Idaho Correctional Center and that it is necessary that GREGORY MCAMIS be brought before the Honorable Bradley S. Ford in the Judicial Court at 201 Industrial Ave., Council, Idaho for his Court date on the 3rd day of August, 2012 at the hour of 11:00 o'clock a.m.;

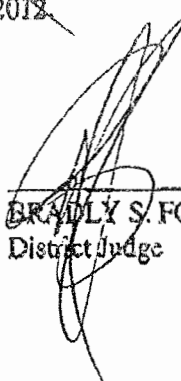
IT IS THEREFORE ORDERED that the Adams County Sheriff bring the Petitioner from the South Idaho Correctional Institution to Adams County Courthouse at said time and on said date;

IT IS FURTHER ORDERED that immediately following said court date the Sheriff return said Petitioner to the custody of the South Idaho Correctional Institution;

IT IS FURTHER ORDERED that the South Idaho Correctional Institution release the said Petitioner to the Adams County Sheriff, for the purpose of the aforementioned court appearance; and

IT IS FURTHER ORDERED that the Clerk of this Court serve a copy hereof upon the Adams County Sheriff's Department forthwith and certify the same.

DATED: July 9th, 2012



BRADLY S. FORD
District Judge

Third Judicial District Court -- Adams County

Court Minutes

CV-2010-0002655

CR-2006-6057

Gregory Scott McAmis, Plaintiff vs State Of Idaho, Defendant

Hearing type: Evidentiary

Hearing date: 7/2/2012

Judge: Bradly S Ford

Time: 11:57 am – 12:10 pm

Court reporter: Debora Kreidler

Minutes Clerk: JAN 

Party: Gregory McAmis, Attorney: Tyler Rounds

Prosecutor: Richard Roats

1157	<p>This being the time set for Evidentiary Hearing on Post Conviction Relief, the Defendant was present in custody of the Adams County Sheriff and was represented by Matt Roker on behalf of his Court-appointed Attorney,.</p> <p>Defense advised the court that the agreement had been vacated, nothing stipulated, and requested this be re-set for evidentiary. State had no comment. Court determined that the Canyon County case had been resolved.</p>
1200	<p>Court reset this matter for Evidentiary Hearing on August 3, 2012, at 11:00 am. Court stated that it would not accept an agreement. Discussion was held with the Defendant clarifying the evidentiary hearing on Post Conviction Relief</p> <p>Defense will prepare Order to Transport Defendant for the August 3 hearing.</p>

Third Judicial District Court -- Adams County

Court Minutes

CV-2010-0002655

Gregory Scott McAmis, Plaintiff vs State Of Idaho, Defendant

Hearing type: Evidentiary

Hearing date: 8/3/2012

Judge: Bradly S Ford

Time: 11:20 am – 3:17 pm

Court reporter: Roxanne Patchell

Minutes Clerk: JAN *W*

Party: Gregory McAmis, Attorney: Tyler Rounds

Prosecutor: Myron Gabbert

1120	<p>This being the time set for Evidentiary Hearing on Post Conviction Relief, the Defendant was present in custody of the Adams County Sheriff and was represented by his Court-appointed Attorney, Tyler Rounds.</p> <p>All parties indicated they were ready to proceed. Court reviewed Defendant's sentence, including Canyon County concurrent sentence.</p> <p>Discussion was held on different scenarios of this process. Court advised the Defendant of the possible consequences of various outcomes.</p>
1151	<p>Following a brief recess to allow Defendant to review with his attorney, Defense noted that the State would recommend 2 years + 3 years with probation of 14 years. Also noted was that the victim requested that the sentence remain as set. Defendant requested withdrawing the Post Conviction Relief action and leave sentence.</p> <p>Court advised the parties that it could not impose probation term longer than the sentence. More discussion was held.</p>
1200	<p>Following a second recess for Defendant to discuss with his attorney, Defendant still indicated he was confused.</p>
1209	<p>Court proceeded to Evidentiary Hearing. Defense referenced transcripts in file. Court took judicial notice of the official transcripts of Change of Plea Hearing July 7, 2008, and Sentencing Hearing October 9, 2008. Court noted that because the Defendant was shackled, he could remain seated at the table.</p> <p>Defense called the Defendant, who was sworn and questioned. Court asked attorneys to compare copies of transcripts, to be marked as Plaintiff Exhibit 1. Due to confusion over the transcripts, Court struck Exhibit 1.</p>

1256	Following a third recess to clarify transcript copies, State advised the Court that Plaintiff's Exhibit 1 (Change of Plea Hearing July 7) and Plaintiff's Exhibit 2 (Sentencing Hearing October 9) were marked. Defendant indicated he was confused. Court recessed for lunch.
207	<p>Court resumed and the parties stipulated to the admission of Plaintiff's Exhibits 1 and 2. Court admitted Plaintiff's Exhibits 1 and 2.</p> <p>Defense resumed questioning the Defendant, who was still under oath. State cross examined the Defendant.</p> <p>Defense had no further witnesses. State indicated it had no witnesses.</p>
254	Defense gave final argument.
305	State gave final argument. Defense had no rebuttal argument and required no written briefs
311	Court took this matter under advisement. Defense requested a new Presentence Report be prepared. Defendant waived preparation of an updated report. Court noted that it may require a written waiver.
317	Defendant was remanded to the custody of the Adams County Sheriff for return transport to the Department of Corrections.

57

FILED

AUG - 3 2012 5:10 pm

SHERRY WARD, CLERK

Sherry Ward

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS
MAGISTRATE DIVISION

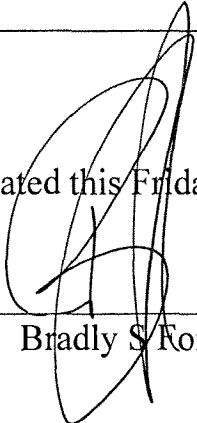
STATE OF IDAHO)
Plaintiff,)
vs.)
GREGORY SCOTT MCAMIS)
Defendant.)
DOB: [REDACTED])
DL or SSN: [REDACTED] ID)
_____)

CV2010-2655
Case No: CR-2006-0006057-FE
COMMITMENT

IT IS HEREBY ORDERED that the above named Defendant be committed
to the custody of the Sheriff of Adams County, Idaho:

- ☐ Bond having been set in the sum of \$_____.
- ☐ Bond having been (increased)(reduced) to the sum of \$_____.
- ☒ Other: for transport to return to the custody of the Idaho Department
of Corrections

Dated this Friday, August 03, 2012.



Bradly S Ford, District Judge

cc: Adams County Sheriff
COMMITMENT

51

Certified
copy

FILED

SEP 20 2012 12:45 pm

SHERRY WARD, CLERK

Jan H

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

GREGORY SCOTT MCAMIS

Petitioner,

v.

STATE OF IDAHO,

Respondent,

Case No. CV-2010-2655

**ORDER GRANTING POST-
CONVICTION RELIEF**

This is a post-conviction relief proceeding filed pursuant to Idaho Code 19-4901 *et seq.* On August 3, 2012, this matter proceeded to evidentiary hearing. The Petitioner, Gregory Scott McAmis appeared and was represented by attorney, Tyler Rounds. Attorney Richard Roats acting as a special deputy Adams County Prosecuting Attorney appeared on behalf of the Respondent, State of Idaho. For the reasons expressed below, the court grant's the Petitioner's request for post-conviction relief and orders the matter be set for re-sentencing.

Procedural History

The Criminal Case CR-2006-6057-FE

For purposes of this decision, the court takes judicial notice, pursuant to Idaho Rule of Evidence 201, of the underlying criminal action, Adams County case number CR-2006-605-FE.

On March 2, 2007, Petitioner Gregory Scott McAmis (McAmis) was charged by Information with the offense of Grand Theft by Deception along with being a Persistent Violator. On July 7, 2008, McAmis pled guilty to one count of Grand Theft and the Persistent Violator charge was dismissed. On October 9, 2008 the Honorable Stephen Drescher sentenced McAmis to the custody of the Idaho Department of Corrections for a total unified sentence of eleven (11) years, consisting of a determinate sentence of five (5) years followed by an indeterminate sentence of six (6) years on the Grand Theft offense. Judge Drescher granted McAmis credit for two hundred-six (206) days for time served and ordered the sentence to run concurrent with a pending Canyon County case. The Judgment and Commitment executed by Judge Drescher was filed October 14, 2008. McAmis' attorney filed a Notice of Appeal on November 19, 2008 alleging that Judge Drescher's sentence was excessive and requesting that a partial transcript of the sentencing hearing be prepared. The November 19, 2008 Notice of Appeal did not assert that the prosecuting attorney breached a plea agreement. On November 21, 2008 McAmis filed a *pro se* Notice of Appeal in which he alleges the prosecuting attorney breached an applicable plea agreement during his sentencing hearing. On December 17, 2008, Judge Drescher executed an order appointing the State Appellate Public Defender on Direct Appeal. On January 29, 2009, McAmis' attorney filed a Rule 35, Motion to Modify or Reduce Sentence on his behalf. On February 2, 2009, McAmis filed a *pro se* Motion for Correction or Reduction of Sentence, ICR 35. On February 9, 2009 the State Appellate Public Defender filed an Amended Notice of Appeal also alleging that Judge Drescher imposed an excessive sentence and requesting preparation of a change of plea and sentencing transcript. On February 17, 2009, an Order on Motion to Reduce Sentence was filed denying McAmis' Rule 35 motion. A *pro se* Notice of Appeal re: Rule 35 Motion was filed on March 12, 2009. On March 24, 2009, an Amended

Judgment and Commitment was filed granting the defendant five hundred twenty-one (521) days credit for time served. On October 1, 2009, the Idaho Court of Appeals issued an unpublished opinion affirming the actions of the District Court. This decision specifically addressed the Rule 35 and "excessive sentence" arguments. The opinion did not address any breach of plea agreement issues. A Remittitur was issued on November 4, 2009 and on December 15, 2009 a Remittitur from the Idaho Supreme Court was issued denying McAmis' Petition for Review. Although McAmis had alleged in his November 21 *pro se* Notice of Appeal that the prosecuting attorney had breached his plea agreement during the sentencing hearing, that issue was apparently never asserted on his behalf by his attorney, J. D. Hallin or the State Appellate Public Defender nor was it addressed by the Appellate Courts.

The Post-Conviction Relief Action - CV-2010-2655

On September 28, 2010, McAmis filed a *pro se* Petition and Affidavit for Post-Conviction Relief. On April 12, 2011, a Verified Amended Petition for Post-Conviction Relief and Petitioner's Second Affidavit in Support of Post-Conviction Relief was filed on behalf of McAmis by Tyler Rounds, court appointed Conflict Public Defender. On April 25, 2011, the State filed an Answer. At the request of McAmis, this court delayed the trial this action pending resolution of McAmis' Canyon County Post-Conviction Relief proceeding.

As noted above, an evidentiary hearing was held in this case on August 3, 2012. During the hearing the court took judicial notice of a change of plea hearing transcript and a sentencing hearing transcript stipulated into evidence by the parties as Petitioner's Exhibits "1" and "2". The only witness to testify was McAmis and the parties offered oral argument in support of their respective theories of the case.

The Petitions for Post-Conviction Relief

Pro se Petition

In his pro se Petition, McAmis makes a claim of Ineffective Assistance of Counsel. He alleges that his counsel promised him that the sentencing judge would agree to the plea agreement as put on the record at the time of the change of plea and that the State would stand silent as to the sentence. In addition, he argues that his attorney would seek probation at sentencing but then asked for prison time. McAmis also alleges that he is entitled to post-conviction relief because the State breached the plea agreement by failing to make a recommendation at sentencing consistent with the agreement. As relief, McAmis asks the court to follow the original plea agreement, or impose a four (4) year fixed prison term with no indeterminate term, or in the alternative, that he be allowed to withdraw his plea of guilt.

Verified Amended Petition

In the amended Petition, McAmis provides further factual support for his claims and alleges that his attorney, J.D. Hallin, and the prosecuting attorney, Myron Gabbert entered into a plea agreement which included a recommendation by the State for a sentence of two (2) years determinate followed by five (5) years indeterminate with the sentence being suspended in favor of probation and that McAmis would be entitled to ask for a withheld judgment. McAmis also alleged that the State breached its plea agreement at sentencing by recommending that the judge impose incarceration consistent with the recommendations set forth in the Pre-Sentence Investigation Report. Finally, McAmis alleges that Hallin was ineffective by failing to object to the prosecuting attorney's recommendation and by failing to argue for the sentence outlined by the previously entered plea agreement. As relief, McAmis seeks to vacate the conviction and set the matter for a new trial.

LAW AND ANALYSIS

An application for post-conviction relief initiates a proceeding that is civil in nature. *State v. Bearshield*, 104 Idaho 676, 678 (1983). However, an application for post-conviction relief differs from a complaint in an ordinary civil action. An application must contain much more than a "short and plain statement of the claim". It must be verified with respect to facts within the personal knowledge of the applicant. Further, affidavits, records or other evidence supporting its allegations must be attached, or the application must state why such supporting evidence is not included. I.C. § 19-4903. In other words, the application must present or be accompanied by admissible evidence supporting the allegations, or the application will be subject to dismissal. *Id.* An application for post-conviction relief may be filed at any time within one year from the expiration of the time for appeal or from the determination of proceedings following an appeal. I.C. § 19-4902.

Idaho Code § 19-4906 authorizes summary disposition of an application for post-conviction relief either pursuant to the motion of a party or upon the court's own initiative. Summary dismissal is the procedural equivalent of summary judgment under I.R.C.P. 56. *Cowger v. State*, 132 Idaho 681, 684 (Ct. App. 1999). It is appropriate only when the applicant's evidence has raised no genuine issues of material fact that if resolved would entitle the applicant to relief. *Id.* If such a factual issue is presented, an evidentiary hearing must be conducted. *Gonzales v. State*, 120 Idaho 759, 763 (Ct. App. 1991). However if there is no material issue of fact the court can, on its own motion, dismiss without a hearing. I.C. § 19-4906(b). In this case, the State did not seek summary dismissal of the action and the matter proceeded to Evidentiary Hearing for consideration of the claims on the merits.

At issue in this case is the effect of a plea agreement. It has been held that a plea agreement is to be evaluated in accordance with the standards of contract law. *State v. Peterson*, 148 Idaho 593, 596, 226 P.3d 535, 536 (2010). This is a standard that has been supported by the United States Supreme Court when it stated “when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.” *Id.* citing *Santobello v. New York*, 404 U.S. 257, 262, 92 Sup. Ct. 494, 499 (1971). The State is held to a high standard to abide by the terms of plea agreement because such principle is grounded in the Due Process clause and the rule that a defendant’s valid plea of guilty must be made voluntarily and intelligently. *State v. Doe*, 138 Idaho 409, 410, 64 P.3d 335, 336 (2003). “If the prosecution breaches a promise made in a plea agreement, the defendant pleads guilty on a false premise and is entitled to relief.” *Id.* When a defendant claims that a plea agreement has been breached the court must examine the language of the plea agreement and resolve any ambiguities in favor of the defendant. *Peterson, supra.* A defendant who successfully shows a breach of a plea agreement may be entitled to either specific performance of the agreement, or the court may allow the defendant to withdraw his plea of guilt. *Doe*, 138 Idaho at 337. In making a determination of the appropriate remedy, the court may take into consideration whether the State has received the benefit of the bargain and whether the defendant may be prejudiced if allowed to face the possibility of being tried and resentenced for the same offense. *Id.* In *Doe*, the court ordered specific performance because it would “hold the State to its agreement, give Doe the terms he bargained for, and bring this case to an end.” *Id.*

In an Ineffective Assistance of Counsel claim, a defendant must satisfy the two prong test that: 1) his counsel’s performance fell below an objective standard of reasonableness, and 2)

there is a reasonable probability that, but for counsel's errors, the results of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-688 (1984). The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. *Id* at 686. See *State v. Charboneau*, 116 Idaho 129, 137, *cert denied*, 493 U.S. 922 (1989); see also *Gibson v. State*, 110 Idaho 631 (1986); *Paradis v. State*, 110 Idaho 534 (1986); *Carter v. State*, 108 Idaho 788 (1985). To prevail on an ineffective assistance of counsel claim, the defendant must show that the attorney's performance was deficient, and that the defendant was prejudiced by the deficiency. *Jakoski v. State*, 136 Idaho 280, 284 (Ct. App. 2001). To establish a deficiency, the applicant has the burden of showing that the attorney's representation fell below an objective standard of reasonableness. *Aragon v. State*, 114 Idaho 758, 760 (1988). To establish prejudice, the applicant must show a reasonable probability that, but for the attorney's deficient performance, the outcome of the case would have been different. *Id* at 761.

In this case, the court has as evidence before it the transcripts detailed below and the testimony of McAmis presented in open court. The State has not sought to admit any evidence in support of its defense of the case. The court has carefully reviewed the transcripts admitted as Exhibit 1 and Exhibit 2 and finds the following portions relevant to this action.

Exhibit 1: Change of Plea Transcript – July 7, 2008

Page 4, ll.10-25, Page 5, ll. 1-20

Mr. Hallin: Your honor, after speaking with Mr. Gabbert, I and my client, I believe we have reached an agreement, wherein, Mr. McAmis would enter a plea of guilty to one count of grand theft as contained in the information filed in this matter.

As part of that agreement, the State would move to dismiss the habitual offender enhancement, and agreed not to file charges against Mr. McAmis

relating to his failure to appear at the jury trial that was scheduled last summer, I believe.

Also, the State and the defense have agreed to recommend a two to five year sentence which would be suspended. The State and the defense would ask that that be concurrent with Canyon County.

As part of the agreement, Mr. McAmis would agree to pay full restitution and court costs in this case. I believe restitution is in the neighborhood of \$20,000 to \$40,000, somewhere between the two. We could set a restitution hearing for that purpose.

Mr. McAmis would reserve the right to request a withheld judgment, if he qualified.

The Court: And Mr. Gabbert, is that your understanding?

Mr. Gabbert: Yes, Judge, I believe it is.

The Court: And Mr. McAmis, is that your understanding, sir, of the negotiations arrived at between you lawyer and the lawyer for the State of Idaho?

The Defendant: All, Your Honor, except for the Habitual Offender Act....

Page 9, ll. 12-25

The Court: Mr. McAmis, have the lawyers told the court about all the parts of the plea agreement?

The Defendant: No, sir.

The Court: Tell me about any part that they haven't told the court about.

The Defendant: The main part was the charges against my ex-wife would be dismissed. That was not brought up to the court, Your Honor, and I wanted to discuss that with you.

The Court: All right. I understand that that's their intent.

The Defendant: Yes, sir.

The Court: And we'll leave that part of the record in your change of plea.

Exhibit 2: Sentencing hearing, October 9, 2008

Page 38, ll. 10-22

Mr. Gabbert: But the bottom line for you, Judge, is look at the presentence report. It says, incarcerations under the custody of the Idaho Board of Corrections.

And, Judge, I think the victims have reconciled with themselves that if and when they ever get any money back, restitution, whether it be 29,000 or 49,000, that's going to be a long whole day in you know where.

But they brought this case to the attention of the authorities with the goal to prevent it from happening again.

And now it's your job to see that that goal is met.

Page 39, ll. 2-15

Mr. Hallin: Well, Your Honor, apparently I misunderstood the nature of the plea discussions with the State. It was my understanding that the State would honor my request for a sentence of two to five years, and they would not recommend a – make recommendations as to incarceration or to whether they be suspended, and that was after lengthy discussions.

Initially, I believe the State had indicated that they would stand silent as the time of the sentencing hearing. What we just heard is inconsistent with both of those.

Regardless, Your Honor, this court can make its own determination in this matter.

Page 43, ll. 22-25, page 44, ll.1-2

Mr. Hallin: If this court was to retain jurisdiction, Mr. McAmis would top out somewhere over two years of incarceration in this instant offense.

So, in that note, I think a sentence of two to five years would be appropriate. I would request that it be suspended, give him credit for time served.

Page 44, ll. 14-22

So, regardless, Mr. McAmis would like the opportunity to prove himself on probation. I think that any concern of the court would likely include the condition that he cannot enter into any business transactions without supervisory – direct supervisor- and I think that would be good for Mr. McAmis.

However, if this court were to consider incarceration, I would like this court to consider the retained jurisdiction program.

Page 50, ll. 20-25, page 51, ll.1-6

The Court: All right. Based on the nature of the offense, and the information in the presentence investigation, the presentation of the prosecutor and defense counsel, our supplemental testimony from Mr. and Mrs. James, and Mr. McAmis' presentation here today, the application and the weighted in for sentencing in State versus Toohill and State versus Wolfe to the facts of this case, as well as the sentencing criteria in 19-2521, I'll sentence Mr. McAmis to a unified term of incarceration of eleven years in the Idaho Board of Corrections, the first five of which will be fixed.

McAmis testified at the Evidentiary Hearing that he understood the plea agreement he entered into in this case was that in exchange for his guilty plea to one count of Grand Theft, the

State would dismiss the persistent violator enhancement and recommend a suspended sentence of two years determinate followed by three years indeterminate for a unified sentence of five years to run concurrent with a Canyon County case and with a probation recommendation. The State would be able to pursue full restitution and court costs which amount would be determined by hearing if not otherwise agreed. McAmis reserved the right to request a withheld judgment. In addition, McAmis also stated that he understood that the State would stand silent which statement caused confusion for McAmis' attorney and this court because an agreement to remain silent is inconsistent with the assertion that the State agreed to recommend the specific sentence set forth above suspended with probation. This court inquired of the parties whether McAmis' interpretation of the agreement could have included an understanding or discussion off the record that the State would stand silent as to his potential request for a withheld judgment. This conflicting statement remained unresolved during the post-conviction relief hearing, but the court does not find the issue to be determinative of the issues presented in the case. The most likely explanation for McAmis' recollection was that in addition to the state's agreement to recommend the sentence of two years determinate followed by three years indeterminate for a unified sentence of five years suspended with probation to run concurrent with the Canyon County case, the State would stand silent on Defendant's potential request for a withheld judgment. There is no dispute by the State that there was a plea agreement that was entered in this case. A plain reading of the portion of the change of plea hearing quoted above shows that defense counsel put the agreement on the record and the Prosecutor agreed with the representations placed on the record. There was in fact a plea agreement. The State has not disputed the terms of the plea agreement placed on the record July 7, 2008. Therefore, the court finds that McAmis has met his

burden of proof showing that there was a plea agreement applicable to his sentencing and that the terms of the agreement were placed on the record at the July 7, 2008 change of plea hearing.

The court also notes that the State now acknowledges that on October 8, 2008, the Prosecutor failed to make recommendations consistent with the plea agreement placed on the record at during the July 7, 2008 change of plea hearing. Instead on October 8, 2008, the Prosecuting Attorney recommended that the court follow the incarceration recommendation contained in the Pre-Sentence Investigation report. It is clear to the court that during McAmis' October 8, 2008 sentencing, the Prosecuting Attorney made a recommendation that was inconsistent with the plea agreement. The transcript of the October 8, 2008 sentencing hearing evinces that the prosecuting attorney recommended to the court that it impose a period of incarceration on McAmis consistent with the recommendations contained in the Pre-Sentence Investigation Report. The court finds that the prosecuting attorney breached his plea agreement with McAmis and his attorney.

“ ‘[A] defendant is constitutionally entitled to relief when the state breaches a promise made to him in return for a plea of guilty.’ ” *State v. Rutherford*, 107 Idaho 910, 913, 693 P.2d 1112, 1115 (Ct.App.1985) (quoting *United States v. Ocanas*, 628 F.2d 353, 358 (5th Cir.1980)). “ ‘[W]hen the prosecution breaches its promise with respect to an executed plea agreement, the defendant pleads guilty on a false premise, and hence his conviction cannot stand.’ ” *Id.* (quoting *Mabry v. Johnson*, 467 U.S. 504, 104 S.Ct. 2543, 2547, 81 L.Ed.2d 437 (1984)). *See also State v. Ballard*, 114 Idaho 799, 761 P.2d 1151 (1988); *Mata*, 124 Idaho at 595, 861 P.2d at 1260; *State v. Litz*, 122 Idaho 387, 834 P.2d 904 (Ct.App.1992); *Jones v. State*, 118 Idaho 842, 801 P.2d 49 (Ct.App.1990). *Berg v. State*, 131 Idaho 517, 519, 960 P.2d 738, 740 (1998)

McAmis has also alleged that his defense attorney was ineffective because he failed to object to the prosecuting attorney's breach of the plea agreement at sentencing and for failing to assert the plea agreement recommendations to the court. The sentencing transcript shows that the Defendant's attorney only stated that he must have "misunderstood" the plea agreement and then asked the court to consider the two plus three sentence and probation, or in the alternative, to consider a period of retained jurisdiction. This court is concerned that the Defendant's attorney failed to object to the prosecuting attorney's recommendation make a record that the Prosecutor's recommendation violated the plea agreement placed on the record at the change of plea hearing. The court cannot determine that it would be probable that such an objection and assertion by the Defendant's attorney would have altered Judge Drescher's sentencing decision. However, there is a distinct possibility that had the Prosecutor made recommendations consistent with the plea agreement and/or if defense counsel had objected and asserted the plea agreement that McAmis may have received a more favorable sentence. The court also notes that had defense counsel properly objected to the prosecutor's breach of the plea agreement, that McAmis may have been given the opportunity to withdraw his guilty plea in order to protect his negotiated rights. Thus the court also finds that Defendant's counsel was ineffective in failing to object to the prosecutor's breach of the plea agreement and that McAmis' was prejudiced thereby.

Although McAmis has met his burden of proof in establishing that the prosecuting attorney breached his plea agreement at the time of his sentencing hearing and that his court appointed attorney was ineffective in his failure to object to this breach of the plea agreement and for his failure to assert McAmis' right to the benefit of the plea agreement or assert this breach in his Notice of Appeal, the court is left with two other issues to address. First, this court

did not originally sentence McAmis so it cannot determine without speculating whether there is a reasonable probability that the sentencing outcome would have been different if his attorney would have effectively compelled the prosecuting attorney to make sentencing recommendations consistent with the plea agreement. However, McAmis was clearly prejudiced by the breach and this denial of a constitutionally protected right should entitle him to a new sentencing hearing where he receives specific performance of the promised recommendation. Second, the breach of plea agreement was never addressed on McAmis' prior appeal and therefore arguably should not be considered by the court as a basis for post-conviction relief pursuant to Idaho Code 19-4901(2). The court does not know why the breach of plea agreement issue was not addressed on the Defendant's direct appeal of his sentence. However, the failure of the defendant's sentencing attorney and the state appellant public defender to assert this issue on appeal should not be visited on the defendant when he attempted to assert it in his *pro se* Notice of Appeal. This was ineffective assistance of counsel and McAmis' was denied his constitutionally protected right to the benefit of a sentencing recommendation consistent with the plea bargain. This court cannot speculate as to whether the sentencing outcome would have been or will be any different, but feels it is obligated to correct the constitutional violation suffered by the defendant.

Therefore, this court concludes that McAmis has met his burden of proof and is entitled to post-conviction relief pursuant to Idaho Code 19-4901(1) on the basis that: (1) He was denied his constitutionally protected right of having the prosecuting attorney honor his plea agreement in making sentencing recommendations; (2) He was denied his constitutionally protected right to be represented by competent and effective counsel. Although the breach of plea agreement could have been but was not addressed on McAmis' direct appeal of his

sentence, it makes no sense to wait for another post-conviction relief proceeding to correct this violation of his constitutionally protected right to the benefit of his plea bargain.

This court finds no basis to set aside the Defendant's guilty plea in this case. The guilty plea was validly entered. The appropriate remedy in this case is to provide McAmis specific performance of the prosecuting attorneys plea bargained sentencing recommendations during a resentencing hearing.

CONCLUSION AND ORDER

For the reasons set forth above, the Petitioner Gregory S. McAmis' Petition for Post-Conviction Relief is granted. The Judgment and Commitment filed October 8, 2008 in Adams County case CR-2006-605 is hereby vacated. The Petitioner Gregory S. McAmis' will be resentedenced on November 2, 2012 at 9:30 a.m. at the Adams County Courthouse, Council, Idaho. He will be given the specific performance of the plea bargained sentencing recommendations during the re-sentencing. He is held without bond on this case pending the resentencing. McAmis' attorney shall prepare the necessary transport order and advise the court in writing within ten days if McAmis desires an updated Pre-Sentence Investigation Report or requests any further evaluations for purposes of sentencing.

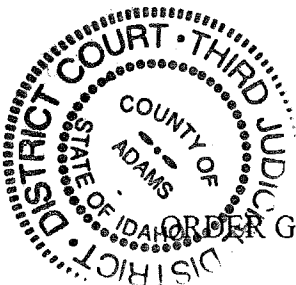
County of Adams } vs
I, the undersigned Recorder and Clerk of the District Court of Adams County, State of Idaho, do hereby certify that the foregoing Instrument is a true and correct copy of the original onfile in my office and in my custody.
IN WITNESS WHEREOF, I have set my hand and affixed my official seal on this 12th day of December
2012
SHERRY WARD

Clerk of the District Court
and County Recorder

Deputy

Dated this 20th day of September 2012

Bradly S. Ford, District Judge



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order was mailed or delivered to the following persons this 20th day of September 2012.

LOVAN ROKER AND ROUNDS
TYLER ROUNDS
Attorneys at Law
717 So. Kimball Avenue, Suite 200
Caldwell, Idaho 83605

*Served
208 - 459-6908*

ADAMS COUNTY PROSECUTING ATTORNEY
MYRON DAN GABBERT
RICHARD ROATS (special deputy prosecutor appearing)
P.O. Box 546
Council, Idaho 83612

*hand
delivered*

SHERRY WARD
Clerk of the District Court

By: *Tara*
Deputy Clerk

Certified
Copy

LOVAN ROKER & ROUNDS, P.C.
 MATTHEW J. ROKER-ISB No. 4835
 TYLER S. ROUNDS - ISB No. 7876
 Attorneys at Law
 717 S. Kimball Avenue, Suite 200
 Caldwell, Idaho 83605
 Telephone: (208) 459-6795
 Facsimile: (208) 459-6908

Attorney for Petitioner

FILED

SEP 21 2012 11:15am

SHERRY WARD, CLERK

Sherry Ward

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

GREGORY MCAMIS,)	
	)	CASE NO. CV10-2655
Petitioner,	)	CR - 2006-6057
)	
vs.	)	ORDER TO TRANSPORT
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

IT APPEARING that the above-named Petitioner is in the custody of the Idaho Correctional Center and that it is necessary that GREGORY MCAMIS be brought before the Honorable Bradley S. Ford in the Judicial Court at 201 Industrial Ave., Council, Idaho for his Court date on the 2nd day of November, 2012 at the hour of 9:30 o'clock a.m.;

IT IS THEREFORE ORDERED that the Adams County Sheriff bring the Petitioner from the South Idaho Correctional Institution to Adams County Courthouse at said time and on said date;

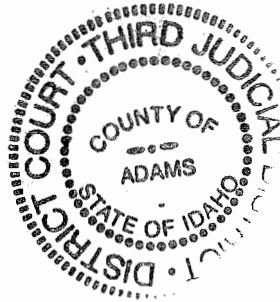
IT IS FURTHER ORDERED that immediately following said court date the Sheriff return said Petitioner to the custody of the South Idaho Correctional Institution;

IT IS FURTHER ORDERED that the South Idaho Correctional Institution release the said Petitioner to the Adams County Sheriff, for the purpose of the aforementioned court appearance; and

IT IS FURTHER ORDERED that the Clerk of this Court serve a copy hercof upon the Adams County Sheriff's Department forthwith and certify the same.

DATED: September 21st, 2012.


BRADLY S. FORD
District Judge



County of Adams } vs

I, the undersigned Recorder and Clerk of the District Court of Adams County, State of Idaho, do hereby certify that the foregoing Instrument is a true and correct copy of the original onfile in my office and in my custody.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal on this 12th day of December 2012

SHERRY WARD

Clerk of the District Court
and County Recorder


Deputy

Certified
Copy

FILED

SEP 28 2012 11:15am

SHERRY WARD, CLERK

[Signature]

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

GREGORY SCOTT MCAMIS

Petitioner,

v.

STATE OF IDAHO,

Respondent,

Case No. CV-2010-2655

JUDGMENT

The court hereby orders that the Petition for Post Conviction Relief is GRANTED
consistent with this court's Order Granting Post Conviction Relief filed on September 20, 2012.

State of Idaho } vs

County of Adams }

I, the undersigned Recorder and Clerk of the District
Court of Adams County, State of Idaho, do hereby certify
that the foregoing Instrument is a true and correct copy of
the original onfile in my office and in my custody.

IN WITNESS WHEREOF, I have set my hand and affixed
my official seal on this 12th day of December
2012

SHERRY WARD

Clerk of the District Court
and County Recorder

[Signature]
Deputy

Dated this 28th day of September 2012

[Signature]
Bradly S. Byrd, District Judge



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Judgment was mailed or delivered to the following persons this 28th day of September 2012.

LOVAN ROKER AND ROUNDS

TYLER ROUNDS

Attorneys at Law

717 So. Kimball Avenue, Suite 200

Caldwell, Idaho 83605

ADAMS COUNTY PROSECUTING ATTORNEY

MYRON DAN GABBERT

RICHARD ROATS (special deputy prosecutor appearing)

P.O. Box 546

Council, Idaho 83612

SHERRY WARD

Clerk of the District Court

By: 

Deputy Clerk

Certified
copy

09-28-'12 16:29 FROM-ad. clerk

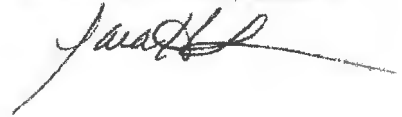
12082534880

T-827 P0001/0002 F-214

FILED

OCT 01 2012 3:30pm

SHERRY WARD, CLERK



LOVAN ROKER & ROUNDS, P.C.
MATTHEW J. ROKER- ISB No. 4835
TYLER S. ROUNDS - ISB No. 7876
Attorneys at Law
717 S. Kimball Avenue, Suite 200
Caldwell, Idaho 83605
Telephone: (208) 459-6795
Facsimile: (208) 459-6908

Attorney for Petitioner

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS**

GREGORY MCAMIS,)	
	)	CASE NO. CV10-2655
Petitioner,	)	CR-2006-6057
)	
vs.	)	ORDER TO TRANSPORT
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

IT APPEARING that the above-named Petitioner is in the custody of the Idaho Correctional Center and that it is necessary that GREGORY MCAMIS be brought before the Honorable Bradley S. Ford in the Judicial Court at 201 Industrial Ave., Council, Idaho for his Court date on the 7th day of December, 2012 at the hour of 9:00 o'clock a.m.;

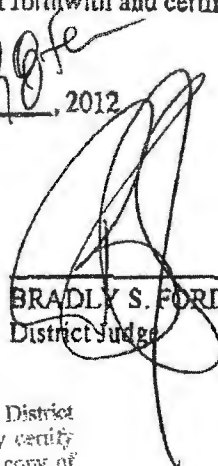
IT IS THEREFORE ORDERED that the Adams County Sheriff bring the Petitioner from the South Idaho Correctional Institution to Adams County Courthouse at said time and on said date;

IT IS FURTHER ORDERED that immediately following said court date the Sheriff return said Petitioner to the custody of the South Idaho Correctional Institution;

IT IS FURTHER ORDERED that the South Idaho Correctional Institution release the said Petitioner to the Adams County Sheriff, for the purpose of the aforementioned court appearance; and

IT IS FURTHER ORDERED that the Clerk of this Court serve a copy hereof upon the Adams County Sheriff's Department forthwith and certify the same.

DATED: September 20th, 2012


BRADLY S. FORD
District Judge

County of Adams }
I, the undersigned Recorder and Clerk of the District

Court of Adams County, State of Idaho, do hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office and in my custody.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal on this 12th day of December 2012


SHERRY WARD

Clerk of the District Court
and County Recorder

Deputy



Certified
COPY

LOVAN ROKER & ROUNDS, P.C.
MATTHEW J. ROKER- ISB No. 4835
TYLER S. ROUNDS - ISB No. 7876
Attorneys at Law
717 S. Kimball Avenue, Suite 200
Caldwell, Idaho 83605
Telephone: (208) 459-6795
Facsimile: (208) 459-6908

FILED

OCT 10 2012 3:30

SHERRY WARD, CLERK

Attorney for Petitioner/Appellant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

GREGORY MCAMIS,)	
	)	CASE NO. CV10-2655
Petitioner/Appellant,)	
vs.	)	NOTICE OF APPEAL
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

TO: THE ABOVE NAMED RESPONDENT, STATE OF IDAHO AND THE PARTY'S ATTORNEYS, MYRON DAN GABBERT, JR., ADAMS COUNTY PROSECUTING ATTORNEY AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, Gregory Mcamis, appeals against the above named respondent to the Idaho Supreme Court the Final Judgment entered in the above entitled action on the 28th day of September, 2012, Honorable Bradley S. Ford presiding.
2. The Appellant has a right to appeal to the Idaho Supreme Court, and the orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11 I.A.R.

3. As a preliminary statement of issues on appeal, which the Appellant intends to assert, is that the court's decision to grant specific performance of the plea bargain instead of withdrawing the plea was in error and should be reversed. This list of issues on appeal is not intended to limit any other possible issues on appeal.

4. No order has been entered sealing any portion of the record.

5. (a) A reporter's transcript is requested.

(b) The appellant requests the preparation of the following portions of the reporter's transcript:

Status Conference held on December 3, 2010, Court Reporter Debra Kreidler, estimated number of transcript pages less than 100.

Status Conference held on April 1, 2011, Court Reporter Debra Kreidler, estimated number of transcript pages less than 100.

Review Hearing held on November 4, 2011, Court Reporter Debra Kreidler, estimated number of transcript pages less than 100.

Pre-Trial Conference held on May 4, 2012, Court Reporter Debra Kreidler, estimated number of transcript pages less than 100.

Evidentiary Hearing held on July 2, 2012, Court Reporter Debra Kreidler, estimated number of transcript pages less than 100.

Court Trial/Post Conviction Relief held on August 3, 2012, Court Reporter Debra Kreidler, estimated number of transcript pages less than 100.

6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R. Order granting Post-Conviction Relief entered on September 20, 2012.

7. I certify:

- (a) That a copy of this notice of appeal has been served on the reporter.
- (b) That the reporter's transcript fee and the clerk's record fee should be paid by the County because the Petitioner/Appellant is indigent and he will apply for payment of fees by the County.
- (c) That there is no appellate filing fee.
- (d) That service has been made upon all parties required to be served pursuant to Rule 20.I.A.R.

CERTIFICATE OF SERVICE: The undersigned hereby certifies that a true and correct copy of the foregoing NOTICE OF APPEAL was facsimile to, MYRON DAN GABBERT, JR., Adams County Prosecuting Attorney at (208) 253-4880, Council, Idaho; to the Administrative Judge, Adams County Courthouse, at (208) 253-4880, Council, Idaho; placed in the court basket of Debora Kreidler, Canyon County Courthouse, Caldwell, Idaho; mailed, postage prepaid, to LAWRENCE G. WASDEN, Attorney General, STATE OF IDAHO, P.O. BOX 83720, Boise, Idaho 83720, and mailed, postage prepaid, to Gregory Mcamis c/o ICC PO BOX 70010, Boise, Idaho 83707 this date.

DATED: October 10 2012.

State of Idaho

County of Adams

I, the undersigned Recorder and Clerk of the District Court of Adams County, State of Idaho, do hereby certify that the foregoing Instrument is a true and correct copy of the original on file in my office and in my custody.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal on this 17th day of December 2012

SHERRY WARD
Clerk of the District Court
and County Recorder

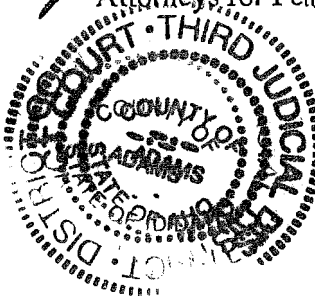
Deputy

LOVAN ROKER & ROUNDS, P.C.

By: [Signature]

TYLER S. ROUNDS

Attorneys for Petitioner/Appellant



Certified
Copy

LOVAN ROKER & ROUNDS, P.C.
 MATTHEW J. ROKER-ISB No. 4835
 TYLER S. ROUNDS - ISB No. 7876
 Attorneys at Law
 717 S. Kimball Avenue, Suite 200
 Caldwell, Idaho 83605
 Telephone: (208) 459-6795
 Facsimile: (208) 459-6908

Attorney for Petitioner/Appellant

FILED

OCT 16 2012 9:00am

SHERRY WARD, CLERK

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

GREGORY MCAMIS)	
	)	CASE NO. CV10-2655
Petitioner/Appellant,)	
	)	ORDER APPOINTING STATE
vs.	)	APPELLATE PUBLIC DEFENDER
	)	IN DIRECT APPEAL
STATE OF IDAHO,)	
)	
Respondent.)	
)	

TO: IDAHO STATE APPELLATE PUBLIC DEFENDER

The above named Petitioner having filed a post-conviction having been convicted.

The Petitioner/Appellant having requested the assistance of counsel in pursuing a direct appeal from the judgment entered, and the Court being satisfied that said Petitioner/Appellant is an indigent person entitled to the services of the State Appellate Public Defender pursuant to Idaho Code §19-870 and that the appeal is from a judgment or order enumerated in Idaho Code §19-870 (1); and good cause appearing;

IT IS HEREBY ORDERED AND THIS DOES ORDER That the State Appellate Public Defender is appointed to represent the above named Petitioner/Appellant on the appeal of the judgment entered in this case.

The State Appellate Public Defender's Office is provided the following information
 ORDER APPOINTING STATE APPELLATE PUBLIC DEFENDER IN DIRECT APPEAL
 Page 1

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concerning the case:

1. The petitioner-appellant's trial defense counsel is: LOVAN ROKER & ROUNDS, P.C. 717 S. Kimball Ave. Suite 200, Caldwell, Idaho 83605.

2. Petitioner appellant's trial defense counsel has advised the Court that the petitioner-appellant's current address is: GREGORY MCAMIS, c/o ICC PO BOX 70010, Boise, Idaho 83707.

DATED: October 15, 2012.

BRADLY S. FORD
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 16th day of October, 2012, I served a copy of the foregoing document on the following individuals mailed, postage prepaid to: LOVAN ROKER & ROUNDS, P.C. at 717 S. Kimball Ave, Suite 200, Caldwell, Idaho 83605, and Canyon County P.A., 1115 Albany Street, Caldwell, Idaho 83605 and Court Reporter, Canyon County Courthouse, Caldwell, Idaho and Appellate Clerk Canyon County Courthouse, Caldwell, Idaho and State Appellate Public Defender via fax to (208) 334-2985 and mailed at P.O. Box 83720, Boise, Idaho 83720.

SHERRY WARD

CLERK OF THE COURT

State of Idaho

County of Adams } vs

I, the undersigned Recorder and Clerk of the District Court of Adams County, State of Idaho, do hereby certify that the foregoing Instrument is a true and correct copy of the original onfile in my office and in my custody.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal on this 16th day of December, 2012.

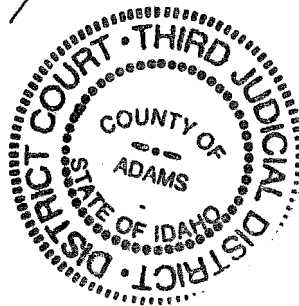
SHERRY WARD

Clerk of the District Court
and County Recorder

Deputy

By: [Signature]

Deputy Clerk



ORDER APPOINTING STATE APPELLATE PUBLIC DEFENDER IN DIRECT APPEAL

Page 2

77

1 IN THE DISTRICT COURT OF THE THIRD
2 JUDICIAL DISTRICT OF THE STATE OF IDAHO
3 IN AND FOR THE COUNTY OF ADAMS
4

5 STATE OF IDAHO,)
6 Plaintiff,)
7 vs.) Case No. CR-2006-6057
8 GREGORY S. MCAMIS,)
9 Defendant.)
10

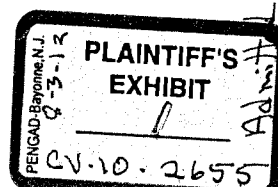
11 REPORTER'S TRANSCRIPT OF PROCEEDING
12 JULY 7, 2008
13

14 PRESIDING JUDGE: THE HONORABLE STEPHEN W. DRESCHER
15

16 APPEARANCES:
17

18 For the Myron Dan Gabbert
19 Plaintiff: Adams County Prosecutor
Post Office Box 546
Council, Idaho 83612
20

21 For the Jonathon D. Hallin
22 Defendant: Attorney at Law
Post Office Box 947
McCall, Idaho 83638
23
24
25



Page 4

PROCEEDING

THE COURT: And we are taking up Mr. McAmis' case, 06-6057.

Mr. Hallin is here for the defense, Mr. Gabbert for the prosecution.

And Mr. McAmis was to be arraigned today, but counsel have indicated they have come to an accord.

Mr. Hallin, you want to tell us what that is, please.

MR. HALLIN: Your Honor, after speaking with Mr. Gabbert and my client, I believe we have reached an agreement wherein Mr. McAmis would enter a plea of guilty to one count of grand theft as contained in the information filed in this matter.

As part of that agreement, the State would move to dismiss the habitual offender enhancement and agree not to file charges against Mr. McAmis relating to his failure to appear at the jury trial, which was scheduled last summer, I believe.

As part of the agreement also the State and defense have agreed to recommend to the court a two-to-five-year sentence, which would be suspended.

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The State and the defense would ask that that be concurrent with Canyon County.

As part of the agreement, Mr. McAmis would agree to pay full restitution and court costs in this case. And I believe restitution is in the neighborhood of 20,000 to 40,000, somewhere between, and we could set a restitution hearing for that purpose.

And Mr. McAmis would reserve the right to request a withheld judgment based on if he's qualified.

THE COURT: And, Mr. Gabbert, is that your understanding?

MR. GABBERT: Yes, judge, I believe it is.

THE COURT: And, Mr. McAmis, is that your understanding, sir, of the negotiations arrived at between your lawyer and the lawyer for the State of Idaho?

DEFENDANT MCAMIS: All, Your Honor, except for the habitual offender act which was removed last year, and I'm not under that any longer.

The court minutes will show, and here is proof from Florida from a judge that I have no felony convictions.

THE COURT: Whatever the allegations, that

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part of it will be dismissed or --

DEFENDANT MCAMIS: Thank you, Your Honor. Yes, sir, I understand.

THE COURT: Now, Mr. McAmis, do you understand, sir, that by withdrawing your former plea of not guilty and now entering a plea of guilty that there will not be a trial, you will be giving up your constitutional right to trial by jury, you will be giving up other valuable constitutional rights, you will be giving up any defenses you may have and you would be exposing yourself to up to 14 years in the penitentiary, a \$5,000 fine, or a combination of both? Do you understand that?

DEFENDANT MCAMIS: Yes, sir, Your Honor.

THE COURT: Mr. McAmis, if you plead guilty here today, sir, do you understand that you will be giving up your constitutional right to trial by jury?

DEFENDANT MCAMIS: Yes, sir, Your Honor.

THE COURT: If you plead guilty, sir, do you understand you will be giving up your right to be presumed innocent?

DEFENDANT MCAMIS: Yes, Your Honor.

THE COURT: If you plead guilty, sir, do you understand you will be giving up your right to

Page 7

confront and cross-examine the witnesses against you?

DEFENDANT MCAMIS: Yes, Your Honor.

THE COURT: If you plead guilty, sir, do you understand you will be giving up your right to compel the attendance of witnesses in your own behalf at no expense to you?

DEFENDANT MCAMIS: Yes, Your Honor.

THE COURT: Mr. McAmis, if you enter a guilty plea you will be giving up what's known as your right against compulsory self-incrimination. That is, you will be giving up your right to remain silent, you will be giving up your right to resist efforts by the State to make you testify against yourself. Do you understand that?

DEFENDANT MCAMIS: Yes, Your Honor.

THE COURT: And if you plead guilty, sir, you will be giving up any defenses you may have and you will be admitting that you committed this felony crime. Do you understand that?

DEFENDANT MCAMIS: Yes, Your Honor.

THE COURT: Mr. McAmis, has anybody threatened you or forced you or coerced you into entering a plea of guilty?

DEFENDANT MCAMIS: Other than the plea

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- (1) agreement, Your Honor, no, sir.
- (2) THE COURT: Are you pleading guilty freely and
- (3) voluntarily?
- (4) DEFENDANT MCAMIS: Yes, Your Honor.
- (5) THE COURT: Are you pleading guilty because
- (6) you want to?
- (7) DEFENDANT MCAMIS: Yes, Your Honor.
- (8) THE COURT: Mr. McAmis, at the sentencing
- (9) phase of this case the lawyers can make a
- (10) presentation about what they think the sentence ought
- (11) to be. The court's not obligated to follow their
- (12) recommendation, and if you enter a plea of guilty the
- (13) court's at liberty to impose whatever penalty it
- (14) deems just and fit. Do you understand that?
- (15) DEFENDANT MCAMIS: Yes, sir, Your Honor.
- (16) THE COURT: Mr. McAmis, let me ask you about
- (17) this now.
- (18) Have you ever before been convicted of a
- (19) felony or are you now on probation or parole of any
- (20) kind?
- (21) DEFENDANT MCAMIS: No, sir, Your Honor, I am
- (22) not and I have not.
- (23) THE COURT: Mr. McAmis, have you had any drugs
- (24) or intoxicants in the last 48 hours?
- (25) DEFENDANT MCAMIS: No, sir, Your Honor.

Page 9

- (1) THE COURT: Mr. McAmis, have you had a full
- (2) opportunity to review with your lawyer the rights
- (3) you'd be giving up by pleading guilty, the
- (4) consequence of giving up those rights, and all the
- (5) evidence accumulated against you by the prosecutor
- (6) and the police?
- (7) DEFENDANT MCAMIS: Yes, sir, Your Honor.
- (8) THE COURT: Have you had a full opportunity to
- (9) review with your lawyer all the defenses you'd be
- (10) giving up if you pled guilty?
- (11) DEFENDANT MCAMIS: Yes, sir, Your Honor.
- (12) THE COURT: Mr. McAmis, have the lawyers told
- (13) the court about all the parts of the plea bargain?
- (14) DEFENDANT MCAMIS: No, sir.
- (15) THE COURT: Tell me about any part that they
- (16) haven't told the court about.
- (17) DEFENDANT MCAMIS: The main part was the
- (18) charges against my ex-wife would be dismissed. That
- (19) was not brought up to the court, Your Honor, and I
- (20) wanted to discuss that with you.
- (21) THE COURT: All right. I understand that
- (22) that's their intent --
- (23) DEFENDANT MCAMIS: Yes, Your Honor.
- (24) THE COURT: -- and we will make that part of
- (25) the record here.

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- (1) Other than that, as regards to you, have
- (2) they left out nut elements of the plea bargain?
- (3) DEFENDANT MCAMIS: No, sir.
- (4) THE COURT: Mr. McAmis, having told me that
- (5) you understand your constitutional rights, and you
- (6) understand the consequence of giving up those rights,
- (7) and you understand the penalty you're exposing
- (8) yourself to, how do you plead, sir, that you, on or
- (9) about the 1st day of November, 2005, in Adams County,
- (10) Idaho, did wrongfully obtain \$29,000 in property of
- (11) the David and Robin James with the intent to
- (12) appropriate it to yourself by means of a false
- (13) promise? How do you so plead?
- (14) DEFENDANT MCAMIS: Guilty, Your Honor.
- (15) THE COURT: We will accept the defendant's
- (16) plea of guilty finding it knowledgeable and
- (17) voluntary.
- (18) And Section 2 of the information will be
- (19) dismissed on motion of the State.
- (20) Now, Mr. McAmis, we're going to order a
- (21) presentence investigation, and that's a report that's
- (22) made to the court concerning you and your facts and
- (23) circumstances and the facts and circumstances
- (24) surrounding this incident.
- (25) Officer Warner will give you some

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- (1) information about the presentence and I want to you
- (2) fill that out as he directs and return it to him.
- (3) DEFENDANT MCAMIS: Your Honor?
- (4) THE COURT: Yes, sir.
- (5) DEFENDANT MCAMIS: May I ask a question?
- (6) THE COURT: Sure.
- (7) DEFENDANT MCAMIS: I've just done a p.s.i.
- (8) investigation with the Third District and it will be
- (9) finished and complete in Canyon County on Wednesday
- (10) of this week.
- (11) THE COURT: All right.
- (12) MR. HALLIN: Is that a possibility that we
- (13) could use that p.s.i. from the Third District?
- (14) THE COURT: Sure is. We can use that one and
- (15) we will just supplement it with your Adams County
- (16) information.
- (17) DEFENDANT MCAMIS: Yes, sir, Your Honor.
- (18) Thank you, sir.
- (19) THE COURT: And we will set your sentencing
- (20) for October 9 at 10:00 o'clock in the morning. And
- (21) we will see you back here then, Mr. McAmis.
- (22) Thank you, sir.
- (23) DEFENDANT MCAMIS: Question, Your Honor?
- (24) THE COURT: Yes.
- (25) DEFENDANT MCAMIS: How does that work? Do I

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- (1) – if I get the plea agreement in Canyon County and
(2) they give me probation, do I get reprimanded back in
(3) custody to here? Because I have a charge in –
(4) THE COURT: Yeah, they will hold you here
(5) until your sentencing is done here.
(6) DEFENDANT MCAMIS: Okay. My question would
(7) be, is there any way that I can be released over to
(8) Ada County to handle some charges for traffic that I
(9) have there?
(10) THE COURT: Um...
(11) DEFENDANT MCAMIS: 'Cause that will put me in
(12) another -- even if I get on probation here with you,
(13) if it's possible, then I'll still have to go to Ada
(14) County for several, four or five months.
(15) THE COURT: Well, in the light of the events
(16) as they have transpired, we won't be reducing your
(17) bond here, as you might understand. But what can
(18) happen is, if the investigatory authorities gather
(19) the necessary information to supplement your
(20) presentence investigation that's been done with the
(21) Adams County information and interviews, we will try
(22) to advance your sentencing date and --
(23) DEFENDANT MCAMIS: Yes, sir.
(24) THE COURT: -- speed the process along, let
(25) you get going.

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- (1) DEFENDANT MCAMIS: Thank you, Your Honor.
(2) THE COURT: All right?
(3) DEFENDANT MCAMIS: Yes, sir.
(4) (Proceeding concluded.)
(5)
(6)
(7)
(8)
(9)
(10)
(11)
(12)
(13)
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(24)
(25)

IN THE DISTRICT COURT OF THE THIRD
JUDICIAL DISTRICT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF ADAMS

MAR - 1 2011

STATE OF IDAHO,)
)
Plaintiff,)
)
vs.) Case No. CR-2006-6057
)
GREGORY S. MCAMIS,)
)
Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDING

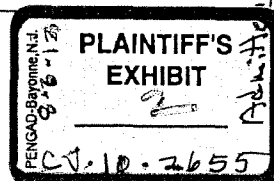
OCTOBER 9, 2008

PRESIDING JUDGE: THE HONORABLE STEPHEN W. DRESCHER

APPEARANCES:

For the Myron Dan Gabbert
Plaintiff: Adams County Prosecutor
Post Office Box 546
Council, Idaho 83612

For the Jonathon D. Hallin
Defendant: Attorney at Law
Post Office Box 947
McCall, Idaho 83638



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(1) PROCEEDING

(2)

(3) THE COURT: Let's take up the matter of State
(4) of Idaho versus Gregory McAmis.(5) This is 06-6057. Mr. Hallin is present
(6) for the defense and Mr. Gabbert for the
(7) prosecution.(8) Mr. Hallin, do you know of any legal
(9) reason why we should not proceed to judgment and
(10) sentence should not be imposed?

(11) MR. HALLIN: No, Your Honor.

(12) THE COURT: Do you have any corrections or
(13) additions to the presentence investigation?

(14) MR. HALLIN: Yeah, Your Honor, thank you.

(15) I have had the opportunity to review the
(16) P.S.I. with my client and I did provide that to him
(17) and he had the opportunity to review that over
(18) evening by himself and then we came back in and met.(19) He did note, and this has been a
(20) continuing source of dispute in this case, is whether
(21) - what Mr. McAmis' prior criminal record is.(22) The N.C.I.C. printout as provided by
(23) Ms. Forsberg, Your Honor, indicates that - indicates
(24) Mr. McAmis has more than one felony conviction out of
(25) the State of Florida stemming from a 1989 incident.

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(1) And then there is also some references to 2002 and
(2) 2003, to some felonies that my client was convicted
(3) of.(4) And I don't believe the State disputes
(5) that the 1989 record should reflect only one felony,
(6) as the State had initially filed a Part 2 habitual
(7) offender enhancement to the information and
(8) thereafter indicated, based on information and
(9) belief, that Mr. McAmis had only one prior felony out
(10) of the State of Florida. And that's my understanding
(11) based on the letter that Mr. Gabbert provided to me.(12) From speaking about Mr. McAmis, however,
(13) he was under the impression that the 1989 conviction
(14) was dismissed.(15) And I did note in the P.S.I. Ms. Forsberg
(16) said, indicated that - on page 7 - she had spoke
(17) with Pasco County, Florida regarding those
(18) convictions and they had indicated that only
(19) probation violations had been dismissed, and she
(20) attached a copy of the court order showing that.(21) And I look through the P.S.I. which also
(22) includes the P.S.I. for Canyon County, and I haven't
(23) - I can't locate that order.

(24) DEFENDANT MCAMIS: I have got it.

(25) MR. HALLIN: And I don't know what she's

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(1) speaking of there.

(2) My client did provide me with an order
(3) from 1999 from Pasco County citing those cases, and
(4) it does indicate those cases were dismissed; however,
(5) I'm - as I was speaking to the court down there
(6) getting an exemplified copy of the judgment, I can't
(7) comment on whether that was a complete dismissal or
(8) - because it's certainly consistent with what this
(9) court would do in the scenario of a withheld
(10) judgment.(11) And I have advised my client that this
(12) court, after the withheld period is over, if he would
(13) successfully complete - or the defendant
(14) successfully completes that, the court goes back and
(15) sets aside that plea of guilty and imposes a withheld
(16) judgment.(17) And it appears very similar to what the
(18) Florida court did in this case in May of 1999. And
(19) it says the motion to dismiss is granted.

(20) I'll provide a copy to Mr. Gabbert.

(21) MR. GABBERT: Thank you.

(22) MR. HALLIN: May I approach, Your Honor?

(23) THE COURT: Yes.

(24) MR. HALLIN: I'm handing you an order from
(25) Pasco County, Florida, from May of 1999, showing -

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(1) and it references those prior felony convictions out
(2) of - that appear in the N.C.I.C., and it does note
(3) the motion to dismiss was granted.(4) Like I said, I - without knowing the
(5) basis I can't say whether that was a complete
(6) dismissal or whether it was a dismissal for some kind
(7) of plea that was held in abeyance, such as a
(8) deferment or a withheld -

(9) THE COURT: Right.

(10) MR. HALLIN: - judgment or the like.

(11) THE COURT: That's the way it looks.

(12) MR. HALLIN: Yeah.

(13) The other note that I would make is
(14) page 10 of P.S.I. also indicates there is a letter
(15) from Allen Rogers, a previous employer at McDade
(16) Corporation where Mr. McAmis worked in California for
(17) a number of years, and I searched P.S.I. high and low
(18) and didn't find that letter as well.(19) Then finally, page 11, Mr. McAmis would
(20) like to clarify the quote that appears in the second
(21) to the last paragraph that he had provided the
(22) victims with a check in this matter, but they wanted
(23) \$5,000 more.(24) Mr. McAmis advised me that was in
(25) reference to the victims in the Canyon County case,

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- (1) and Ms. Forsberg – there must have been a
(2) misunderstanding between the two of them, and the
(3) comment was made –
(4) THE COURT: All right.
(5) MR. HALLIN: – and that was not pertaining to
(6) the Jameses.
(7) Other than that, I will let Mr. McAmis
(8) address his criminal record, as he understands it
(9) more than I do, and the discrepancies that appear in
(10) the N.C.I.C.
(11) THE COURT: All right. Thank you, sir.
(12) Mr. Gabbert.
(13) MR. GABBERT: Judge, the State has several
(14) comments to make about Mr. McAmis, but before the
(15) State proceeds we wonder if the court would please
(16) listen to the victims that were involved in the Adams
(17) County case.
(18) THE COURT: You want to call them as
(19) witnesses, have them sworn, take the stand and adhere
(20) to a question answer format, I'd be delighted.
(21) MR. GABBERT: Thank you.
(22) We'll call David James, judge.
(23) THE COURT: Sir, if you will come forward
(24) raise your right hand and be sworn.
(25)

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- (1) DAVID JAMES,
(2) Having been first duly sworn, testified as follows:
(3)
(4) THE COURT: Please be seated, sir.
(5) Go ahead, Mr. Gabbert.
(6) MR. GABBERT: Thank you, judge.
(7)
(8) DIRECT EXAMINATION
(9) BY MR. GABBERT:
(10) Q. Your name, please?
(11) A. David Allen James.
(12) Q. And where do you reside, just generally
(13) speaking?
(14) A. In Council.
(15) Q. And, Mr. James, you indicated that you
(16) wished to have some input here into the sentencing
(17) hearing involving Mr. McAmis with respect to the
(18) amount of money that you have paid to him for the
(19) purchase of that mobile home –
(20) A. Yeah, I do.
(21) Q. – The subject of the criminal
(22) prosecution.
(23) Just tell the judge what you wanted him
(24) to hear about Mr. McAmis.
(25) A. I lived here my whole life and, you know,

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- (1) when you make a verbal agreement with a person in my
(2) community, it always goes through. I mean, if you
(3) promise to do something in good faith, you – you
(4) finish your dealings with them.
(5) We gave this man right there \$29,250.
(6) He promised to bring me a mobile home,
(7) and he never showed up with it. He boogied off and I
(8) was sitting there with no money, no house, no place
(9) to live, 'cause we sold our other house. We had to
(10) live in a camp trailer. I mean, it was not a
(11) pleasant situation, caused us a lot of – lot of
(12) hardships.
(13) And I think, you know, if you give
(14) somebody something in good faith that they ought to
(15) do what they're supposed to and give you your – your
(16) commodity that you bought from them.
(17) Q. Mr. James, when you were living in the
(18) camp trailer, that was necessitated by the fact that
(19) you were out this sum of money?
(20) A. Yeah. We had to sell our other house
(21) because we borrowed money against our first house to
(22) get this project all taken care of.
(23) Q. And when you were living in that camp
(24) trailer, that was a result of the failure to deliver
(25) the –

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- (1) A. Yeah, we should have –
(2) Q. – mobile home that you bought?
(3) A. Yes. We should have already had the
(4) house sitting there.
(5) Q. And tell the judge how many kids you got
(6) and what their ages are.
(7) A. We have three children, one boy and two
(8) girls. The – the son was – he's 17 now, my
(9) daughter is 16, and my youngest is 10.
(10) Q. And how big was your camp trailer?
(11) A. 19-footer or something, pretty – pretty
(12) dinky.
(13) Q. All right. And, Mr. James, I understand
(14) that the circumstances to have been that you – you
(15) gave Mrs. James, your wife, a lot of discretion as to
(16) how to handle the purchase of the home and make the
(17) arrangements for this project.
(18) A. Oh, yes.
(19) Q. Am I right?
(20) A. Yes, sir.
(21) Q. And she has more particular facts to
(22) state about it?
(23) A. Yes, she does.
(24) Q. Okay.
(25) A. Exactly.

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- (1) MR. GABBERT: Any questions that you have for
(2) him, judge, would be glad to be answered or –
(3) THE COURT: I don't, but maybe there's
(4) cross-examination.
(5) THE COURT: Mr. Hallin.
(6) MR. HALLIN: No questions for Mr. James, Your
(7) Honor.
(8) THE COURT: Thank you, Mr. James. You may
(9) step down.
(10) MR. GABBERT: Thanks Mr. James.
(11) We'll call Robin James, judge.
(12) THE COURT: Ma'am, if you'll come forward and
(13) raise your right hand and be sworn.
(14)
(15) ROBIN JAMES,
(16) Having been first duly sworn, testified as follows:
(17)
(18) THE COURT: Ma'am, please be seated.
(19)
(20) DIRECT EXAMINATION
(21) BY MR. GABBERT:
(22) Q. Mrs. James, your name, please.
(23) A. Robin Sue James.
(24) Q. And are you the wife of the person that
(25) just testified?

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- (1) A. Yes, sir, I am.
(2) Q. Mrs. James, would you tell the judge what
(3) you'd like to explain about the circumstances
(4) involving the defendant Mr. McAmis and the purchase
(5) of that mobile home that – for the money that your
(6) hubby testified about?
(7) A. Yes, sir. My husband David and I, back
(8) in November of 2005, made an agreement with
(9) Mr. McAmis, representing Capital Housing, to purchase
(10) a mobile home for the amount that my husband said,
(11) \$29,250.
(12) And as he also said, we, in good faith,
(13) wired the funds as was required by that company
(14) within 48 hours.
(15) And for that amount that we wired, we
(16) were promised to have that house delivered within
(17) three weeks.
(18) And per Mr. McAmis, told to go ahead and
(19) prepare a site, our foundation. He gave us the specs
(20) for the foundation, so we hired a local contractor to
(21) come in, set it up, so it would be specific to that
(22) motor home.
(23) We contacted Idaho Power and had power
(24) put in. We had a road put in, a septic system. We
(25) did the whole gamut of what you're supposed to do.

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- (1) It didn't come within the three weeks,
(2) and actually no time afterwards, but between then and
(3) the time frame of November 2005 and actually February
(4) of 2006, Mr. McAmis kept telling us it would be
(5) delivered. He'd give us a date, and of course during
(6) this time in this country we have a lot of snow, so
(7) he'd say, well, get that road plowed, we'll have it
(8) delivered on this day.
(9) So we'd hire – go out and hire somebody
(10) to plow the road. There was times David and I took
(11) off work and ourselves shoveled out several feet of
(12) snow from inside the foundation, or snowblowed it or
(13) whatever it took, because time and time again
(14) Mr. McAmis told me that, I will have that house for
(15) you.
(16) And the way – as my husband said – that
(17) we obtained the funds for this was we took out equity
(18) in the house that we had in town. We had fixed it up
(19) and done what we could. And therefore, since we were
(20) receiving this house, we put up our house for sale
(21) and sold it, and then only had a specific amount of
(22) time to get out. We delayed that as long as we could
(23) with some courteous buyers, but at some point we had
(24) to get out.
(25) So we had to move our family into a camp

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- (1) trailer that we borrowed from my mom and dad. He was
(2) close, it was not 19 feet it was 23 feet, but still,
(3) for a family of five that's pretty small. So my
(4) oldest son and daughter, they chose to spend quite a
(5) bit of time with some other relatives because it was
(6) kind of a hardship sitting out there, and it was
(7) quite warm at this point. This was the following
(8) spring, I'm sorry.
(9) And so I have to say that a lot of the
(10) part that I would like Mr. McAmis to understand is
(11) the effects that it had to our family.
(12) Money can be recovered over time. My
(13) husband and I are working very hard to recover what
(14) we can and build back up everything we've lost. The
(15) effects to family's emotions and creating a family to
(16) live apart, I will say as a parent, is one of the
(17) hardest things that I feel we had to go through.
(18) And trying to explain to my children the
(19) trust that we placed in a person and getting my
(20) children to understand who to trust, who not, and
(21) that it's – it's a life lesson.
(22) I – I know there is a lot of facts that
(23) have already been presented to the court, so I'm
(24) really not going to go over those. I just want the
(25) court to understand that my husband David and I

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- (1) realized a long time ago that this man had used all
 (2) our assets.
 (3) We found out later on that within days
 (4) after that money was wired, that large amounts were
 (5) taken out and used for – for partying, and that it
 (6) was used for something that David and I would never
 (7) condone.
 (8) It's bad enough that the roof over our
 (9) heads was taken, but the fact that we – we don't
 (10) have that money, we – in hindsight, I mean, if
 (11) nothing else I would have never bought it and I would
 (12) have given one my kids some form of education, which
 (13) is – there is just so many things that have been
 (14) taken from us.
 (15) I know that money is gone. My husband
 (16) and I have come to terms with that. I also know
 (17) there is a case in Canyon County where the same thing
 (18) happened to some older folks who were closer to
 (19) retirement, and I thank God that we weren't that much
 (20) closer to retirement and have that much of a hardship
 (21) trying to reestablish those funds before that time.
 (22) My main fact right now is I do not want
 (23) to see Mr. McAmis do this to another family. I do
 (24) believe – I don't know all your legal terms of
 (25) habitual offender, but I know what that means to me.

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- (1) It means somebody who does the same thing over and
 (2) over again.
 (3) And I really feel that Mr. McAmis is
 (4) that, because had he been otherwise, he would have
 (5) come through with the truth before I became indebted
 (6) with my husband to other subcontractors to continue
 (7) to plow snow, to – to put a foundation on there, to
 (8) incur expenses with an attorney.
 (9) And I remember Mr. McAmis telling me, you
 (10) need to call an attorney because Capital Housing owes
 (11) you this money, and, Robin, you know, I'm so sorry
 (12) this happened, but they owe you this money, and this
 (13) is a good thing that you should contact a lawyer.
 (14) So we put more money out trying to go
 (15) with a civil case and hired Mr. Bokides out of
 (16) Weiser.
 (17) And when Mr. Bokides found out who the
 (18) person was that set up the company and what was
 (19) actually going on he told us, this is far more than
 (20) civil, Robin.
 (21) And shortly later we found out that there
 (22) was also a criminal case in Canyon County and we
 (23) realized really how stupid I had been in trusting
 (24) this person to – to continually string us along for
 (25) so long before I went to the authorities. In

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- (1) hindsight I feel very silly. I don't know if that
 (2) would have changed anything though, I really don't.
 (3) It's like my husband said, we in good
 (4) faith gave him what we were supposed to on our part
 (5) of the deal and we never got anything, anything at
 (6) all.
 (7) It left us with a foundation, and a
 (8) foundation that was specific to only two different
 (9) types of mobile homes. We – we spent hours looking
 (10) to find a replacement. We hoped maybe we could find
 (11) a replacement used one that we could put on there.
 (12) Unfortunately for us, the Oakwood home
 (13) that we did is enough – it's like I think 18 inches
 (14) off of a measurement of a typical mobile home, so no
 (15) matter what, we either had to tear the foundation
 (16) out, rebuild it, move everything over. I mean, it
 (17) was a very complicated process.
 (18) And we finally got to the point we just
 (19) wanted to be in a house. I didn't want to live in a
 (20) camp trailer, with my kids staying at my
 (21) mother-in-law's or over at a friend's house for the
 (22) night. I wanted to have a family dinner around our
 (23) own table. I wanted to be sleeping in our bed, not
 (24) in – not in a camper bed. I wanted to cook a real
 (25) meal. I mean, I know these sound like such minute

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- (1) things. At this point, they're not, because –
 (2) THE COURT: They don't sound minute, ma'am.
 (3) Sounds like the ramifications of criminal activity.
 (4) THE WITNESS: Thank you. I – I – I guess I
 (5) just want to reiterate that I understand the money is
 (6) gone. I understand that. I just – I don't want any
 (7) other family to go through this, and I feel like
 (8) right now that's the only thing that I can say,
 (9) because I would never ever wish this on any other
 (10) person.
 (11) And it's actually very humiliating to get
 (12) up in front of your peers, in front of people you
 (13) even work with every day, and feel like such a fool
 (14) because you did enter into a contract thinking that
 (15) this person was going to give it to you, and then I
 (16) find out this person set up this entire company and
 (17) the only two transactions he had were false, and both
 (18) have come to criminal cases.
 (19) I don't – I guess I don't mind looking
 (20) like a fool if I can see that there is any way that
 (21) he can't do it to somebody else, that – and that's
 (22) the only thing I really hope. Don't get me wrong,
 (23) I'd love to have that \$29,250 back. That's just a
 (24) drop in the bucket of what it actually cost us, we
 (25) actually incurred, because of Mr. McAmis's

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(1) suggestions and requirements for us to get this set
(2) up, because it was one of the things, you've got to
(3) have this foundation set up before we can put it on
(4) there for you.

(5) We ended up spending over \$47,000. And
(6) for us, that – that would equal over a – well over
(7) a year's wages of my husband's and well – or you can
(8) look at mine as well over two years. That's a lot of
(9) money that is – you know, and today's economy needs
(10) to go to our food or our gas, or trying to put away
(11) and save for our kids.

(12) And it's very hard to look at your kids
(13) when they're getting ready to graduate – I have two
(14) that are graduating in a year and a half, and I look
(15) at the kids, I say, what do you want to do?

(16) And they're like, well, I don't know. I
(17) have one that says, I'd like to go to college, but I
(18) know that's not really an option. And it isn't for
(19) her.

(20) BY MR. GABBERT:

(21) Q. Mrs. James, were you the one who paid
(22) more attention to the finances for the project that
(23) you and Mr. James went into –

(24) A. Yes, sir.

(25) Q. ~ with Mr. McAmis?

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(1) And, in fact, now you mentioned a rough
(2) number for the judge. One of the purposes for
(3) today's hearing is for the judge to be able to order
(4) restitution. And we understand the amount money you
(5) paid to Mr. McAmis was 29,000 –

(6) A. To Mr. McAmis for Capital Housing it was
(7) \$29,250.

(8) Q. All right. And then in addition to that
(9) you were – as a direct result of the failure to
(10) deliver that mobile home in the fraudulent setting,
(11) you incurred additional expenses out of pocket?

(12) A. Yes, sir.

(13) Q. And how much would that be exactly,
(14) Mrs. James?

(15) A. I don't know the difference between the
(16) two. I know the total, including the house –

(17) Q. Give us the bigger number then.

(18) A. Okay. The total including the house that
(19) we paid for was \$47,987.

(20) Q. Okay.

(21) A. I will tell you though that, you know,
(22) like ~

(23) Q. I'm sorry, Mrs. James, just a follow-up
(24) question –

(25) A. Okay.

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(1) Q. – if I may.

(2) Now that is, that \$47,000 number, does
(3) that include anything for interest?

(4) A. No. That's –

(5) Q. Does it include anything for any padded
(6) items such as time that you devoted to the project,
(7) or those are hard out-of-pocket expenses that you
(8) incurred?

(9) A. I will correct one thing though.

(10) It does include on that – because

(11) Mr. McAmis told me to include that at this time, it
(12) does pay the interest paid on the loan for the house,
(13) the \$587.04. So if you're saying interest, then yes,
(14) it does –

(15) Q. But you didn't –

(16) A. – that part.

(17) Q. You didn't factor in 8 or 10 percent
(18) interest on top of the amount of money that you
(19) paid?

(20) A. No, no.

(21) Q. Okay.

(22) A. No.

(23) Q. All right.

(24) A. No.

(25) Q. Go ahead, Mrs. James, with whatever you'd

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(1) like to tell the judge.

(2) A. I forgot. I'm sorry. I forgot what it
(3) was.

(4) Q. Well, one of the things that's in the
(5) back of my mind, Mrs. James, is that when this case
(6) first arose you basically said you wanted to prevent
(7) other people from suffering the same type of loss.

(8) A. Yes, I do.

(9) Q. And did that, in fact, have been your
(10) driving principle since day one when you first
(11) brought this case to the sheriff's department at
(12) Adams County?

(13) A. Yes, it is, because we knew a long time
(14) ago that to try and recover the funds is pretty hard
(15) when it's from somebody who takes the money that they
(16) are given for a certain item and just blows it. I
(17) don't know what other term to use, but wastes it, you
(18) know, uses it on something else other than paying for
(19) the house to the bank that was repoed from, and then
(20) giving that and keeping your cut.

(21) You know, David and I knew, once we found
(22) out something about the history when we spoke with
(23) Detective Okamoto, we knew then that as far as
(24) recovering funds it's – it's going to be difficult.
(25) I mean, there is – if there is no assets, what can

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- (1) you recover?
- (2) But I believe in the justice system. I
- (3) come from three generations of police officers, and
- (4) I'm very faithful in the justice system in allowing
- (5) it to do itself, and that's why we said no matter
- (6) what, we – we have a responsibility to bring this to
- (7) trial, or whatever. We need to bring him to justice
- (8) and make him accountable for what he's done.
- (9) I – I just hope that by us doing this
- (10) there will be some repercussion to Mr. McAmis that
- (11) will prevent him from doing this in the future to
- (12) anybody else. That's the only hope I have at this
- (13) point.
- (14) Q. Do you have anything else, Mrs. James?
- (15) A. No.
- (16) MR. GABBERT: Thank you.
- (17) THE COURT: Cross.
- (18) MR. HALLIN: No questions for Ms. James, Your
- (19) Honor.
- (20) THE COURT: Thank you, Mrs. James –
- (21) THE WITNESS: Thank you.
- (22) THE COURT: – very much.
- (23) MR. GABBERT: Thank you, Mrs. James.
- (24) Judge, the history of this case is long
- (25) and rather involved. I'll quickly review it for you,

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- (1) because I think you're probably very familiar with
- (2) it, but the case was originally filed quite some time
- (3) ago against not only Mr. McAmis, but his wife
- (4) Mrs. McAmis.
- (5) Prior to the case being filed, or perhaps
- (6) coincidentally with the case being filed, Mr. McAmis
- (7) fled from the jurisdiction of Idaho. I think he had
- (8) been arrested in Canyon County on a similar charge
- (9) for which he has been convicted and not been
- (10) sentenced, and then he absconded out of the state.
- (11) And it took quite some time for the authorities to
- (12) find him. Eventually he and his wife were found in
- (13) Kentucky. And actually we were able to find
- (14) Mr. McAmis only because of the fact that we charged
- (15) Mrs. McAmis as being an accessory to the felony crime
- (16) that Mr. McAmis pled guilty to, because given the
- (17) history of Mr. McAmis, we figured we'd have a hard
- (18) time finding him.
- (19) I think the presentence report in our
- (20) files indicate he uses anywhere from three to four to
- (21) six or eight aliases and multiple Social Security
- (22) numbers to obscure his identity.
- (23) At any rate, we were successful in
- (24) finding her and arresting her and extraditing her,
- (25) bringing her back to Idaho, which then led to his

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- (1) arrest and his extradition back to Idaho in
- (2) conjunction with the case outstanding against him in
- (3) Canyon County.
- (4) And then the case in Canyon County was
- (5) due to go to trial and he pled guilty under plea
- (6) agreement with Canyon County that said that he would
- (7) reduce – they would reduce the felony charge – by
- (8) the way, the scam in Canyon County was identical to
- (9) the scam used here against the Jameses in Adams
- (10) County. Only the numbers were a little different,
- (11) the home was different and the victims were
- (12) different, but the program was the same.
- (13) The day that he was to be sentenced by
- (14) the judge, the judge – he didn't have – hadn't met
- (15) with the presentence investigator in Canyon County,
- (16) so the judge down there said, you leave the
- (17) courthouse here and you go over there to the
- (18) presentence folk and get that done and then be back
- (19) here next month or 40 days later. Lo and behold, he
- (20) disappeared again, absconded again from the
- (21) jurisdiction.
- (22) It took another period of time to find
- (23) him. Finally he was arrested down in Florida, judge,
- (24) and spent some time – and I think you yourself
- (25) reduced his bond up here and had comments at one time

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- (1) that, gee, that was one of the few mistakes that you
- (2) made, you know, by reducing this fellow's bond down.
- (3) But at any rate, the bottom line is it's
- (4) been a long, involved thing. Here is the file, and
- (5) that file in Adams County, let me tell you, is a lot
- (6) of effort. That's five times as fat as any files I
- (7) have almost in the office. And that's on both
- (8) Mr. and Mrs. McAmis. So there is a lot of effort, a
- (9) lot of – a lot of heart throb over the whole thing.
- (10) But the bottom line for you, judge, is
- (11) look at the presentence report. It says
- (12) incarceration under the custody of the Idaho Board of
- (13) Corrections.
- (14) And, judge, the Idaho – I think the
- (15) victims have reconciled with themselves that if and
- (16) when they ever get any money back, restitution,
- (17) whether it be 29,000 or 49,000, that's going to be a
- (18) long cold day in you know where.
- (19) And – but they brought this case to the
- (20) attention of the authorities with the goal to prevent
- (21) it from happening again, and now it's your job to see
- (22) that that goal is met.
- (23) And thank you, judge for paying
- (24) attention.
- (25) THE COURT: Thank you.

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- (1) Mr. Hallin.
- (2) MR. HALLIN: Well, Your Honor, apparently I
- (3) misunderstood the plea – the nature of the plea
- (4) discussions with the State. It's my understanding
- (5) that the State would honor my request for a sentence
- (6) of two to five years, and they would recommend a –
- (7) not make recommendations as to incarceration or
- (8) whether it be suspended. And that was after lengthy
- (9) discussions.
- (10) Initially I believe the State had
- (11) indicated they would stand silent at the time of
- (12) sentencing hearing, and what we just heard is
- (13) inconsistent with both of those.
- (14) Regardless, Your Honor, this court can
- (15) make its own determination in this matter.
- (16) Mr. McAmis advised me that he was
- (17) involved in mobile home sales for 18 years.
- (18) In October of 2005, he went out on his
- (19) own and formed Capital Housing, Inc., and Statewide
- (20) Investments Equities. They were sister companies.
- (21) Mr. McAmis advised me that Capital
- (22) Housing would negotiate the sale of the mobile home
- (23) units and Statewide Investments Equities was
- (24) responsible for the moving and setting up and placing
- (25) of the mobile homes on the foundations.

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- (1) This was a bad business model from the
- (2) start. It was undercapitalized and it was an
- (3) unsustainable business model. And when you're
- (4) dealing with transactions that involve 15 to \$30,000,
- (5) this court's well aware that it doesn't take long
- (6) before you're upsidedown if your using your business
- (7) cards and accounts for personal expenses.
- (8) And that leads me in my second response,
- (9) Mr. McAmis – to the state. Mr. McAmis advises me
- (10) that he disputes the contention that he was partying
- (11) nonstop with the business accounts.
- (12) If you look at his business accounts, the
- (13) court will notice that there are many expenses that
- (14) would otherwise be justifiable, aren't justifiably
- (15) tax write-offs for – as a business expense, they
- (16) were – rather they were personal expenses and they
- (17) shouldn't have been used. His cards shouldn't have
- (18) been used n that manner. Regardless, he wasn't
- (19) partying away the money, or he disputes the
- (20) contention that he was partying away the money.
- (21) However, at some point, a couple
- (22) transactions went upsidedown on him. He advises me
- (23) before that had happened, I believe there was nine to
- (24) ten transactions with mobile homes that had
- (25) successfully gone forward, and the mobile homes had

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- (1) been delivered by Statewide Investments Equities. I
- (2) believe there is a gentleman by the name of Harry
- (3) Hain who purchased one.
- (4) DEFENDANT MCAMIS: Josie Burgess.
- (5) MR. HALLIN: Josie Burgess out of McCall, and
- (6) I believe Latah Motors –
- (7) DEFENDANT MCAMIS: Latah Motors bought 14 from
- (8) me, consecutive.
- (9) MR. HALLIN: So there was an established
- (10) business pattern where there was no criminal --
- (11) elements of criminal activity involved. At a certain
- (12) point however, though, he got upsidedown in his
- (13) business he advised me, and he couldn't finance the
- (14) transactions that he had made and got caught up in a
- (15) web of lies, or excuses that he kept settling forth to
- (16) his - to the victims here before this court, and to
- (17) those involved in the Canyon County case, trying to
- (18) buy some time, as he explained it to me, so that he
- (19) could try to liquidize some of his business assets,
- (20) which would be the trucks and whatnot, to cover these
- (21) bad transactions.
- (22) At a certain point, the attorneys were
- (23) hired. Mr. McAmis was represented by William Belnap
- (24) out of Boise, with the victims being represented by
- (25) Mr. Bokides out of Weiser.

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- (1) April of 2006, a settlement offer was
- (2) reached in which he had a week, I believe, till
- (3) May 28, to pay some of it, I believe it was around
- (4) \$40,000.
- (5) Shortly thereafter Mr. McAmis wasn't able
- (6) to perform and that was the end of the attempts to
- (7) resolve this in the civil arena.
- (8) Mr. McAmis has always acknowledged his
- (9) culpability to me, has indicated he has every
- (10) intention to repay his victims.
- (11) In the Canyon County case, one of the
- (12) require- – or one of the aspects of the initial plea
- (13) bargain was that he – if he could pay restitution in
- (14) that case, which was \$15,000 and some change, I think
- (15) \$15,250, the State would agree to amend the charge to
- (16) a misdemeanor, place him on two years probation.
- (17) That didn't come – or that didn't
- (18) happen. Mr. McAmis was unable to come up with the
- (19) funds due to his incarceration, and then made the
- (20) unfortunate decision to run from his problems to
- (21) Kentucky.
- (22) After – in July of last year when
- (23) Mr. McAmis again went on the run, made the
- (24) unfortunate decision to run from his problems, he
- (25) attempted to come up with the money to pay the

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(1) restitution with the hopes it would resolve his
(2) problems in Canyon County. In fact, he went to the
(3) length of getting cashier's check for \$15,250, but
(4) the - he advises me the court prosecutor would not
(5) accept the money at the time, which I don't know why
(6) they wouldn't accept the restitution payment at that
(7) point.

(8) But regardless, he understands that he
(9) has some obligations to this court.

(10) He - from my calculation, it looks like
(11) he was initially arrested in October of 2006 in this
(12) case, bonded in June of 2006, so it's approximately
(13) eight months. And then he's incarcerated, he advises
(14) me, on this charge since of July of this year when he
(15) was re-arrested in the State of Florida.

(16) DEFENDANT MCAMIS: January 10.

(17) MR. HALLIN: Excuse me, July - or January. I
(18) misspoke.

(19) By my calculation that's somewhere over a
(20) year of county incarceration in various counties and
(21) states under this incident offense.

(22) If this court was to retain jurisdiction,
(23) he would - Mr. McAmis would top out somewhere over
(24) two years of incarceration on this incident offense.

(25) So on that note I think a sentence of two

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(1) to five years would be appropriate. I would request
(2) it be suspended, give him credit for time served.

(3) I think that Mr. McAmis will stipulate to
(4) restitution in this case, if we are provided with the
(5) figures. We don't dispute the 29,000 that's been
(6) paid, and that's the biggest chunk of the
(7) restitution, from my understanding.

(8) So I believe Mr. McAmis - without having
(9) authority - will stipulate to that today, to a
(10) restitution order in the amount of 29,000 today, and
(11) if the victims want to submit proof of additional
(12) restitution we can certainly discuss that and
(13) possibly stipulate to as much.

(14) So regardless, Mr. McAmis would like the
(15) opportunity to prove himself on probation.

(16) I think that any term of this court would
(17) likely include the condition that he cannot enter
(18) into any business transaction without supervisory -
(19) direct supervisor, and I think that would be good for
(20) Mr. McAmis. However, if this court is consider
(21) incarceration, I would like this court to consider
(22) the retained jurisdiction program.

(23) I did note Ms. Forsberg did note that she
(24) felt that Mr. McAmis suffered from some cognitive
(25) errors. I think that the cognitive - well, it's not

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(1) called cognitive self change at Cottonwood, there is
(2) a cognitive program that he could benefit from such
(3) on the retained jurisdiction program.

(4) But I also request that any sentence this
(5) court does be concurrent to what Judge Kerrick will
(6) pronounce in Canyon County.

(7) She has delayed sentencing until
(8) November 17, is my understanding.

(9) THE COURT: Why?

(10) MR. HALLIN: To - well, Mr. McAmis advises me
(11) that is to advise - or to resolve the lingering
(12) issues regarding his prior record, because the State
(13) has brought up the issue that he has more than one
(14) prior felony convictions. His public defender Alex
(15) Briggs has indicated to the court that, based on
(16) information and belief, Mr. McAmis doesn't have any
(17) prior felony convictions.

(18) She's indicated she's going to treat them
(19) differently depending on how it is, so that has been
(20) postponed in Canyon County.

(21) At this time I'll defer to Mr. McAmis to
(22) make a statement.

(23) THE COURT: Mr. McAmis, is there anything
(24) you'd like to say in your behalf, sir?

(25) DEFENDANT MCAMIS: Yes, sir, Your Honor.

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(1) THE COURT: Go ahead, sir.

(2) DEFENDANT MCAMIS: Thank you, sir.

(3) I'd like to comment on the - briefly on
(4) what he said with Judge Kerrick. I think they're
(5) checking the validity of the dismissal paper document
(6) that was submitted to them, so they postponed it for
(7) that, Your Honor.

(8) Secondly, or first of all, I'd like to
(9) apologize to David and Robin and their family. I
(10) understand they don't want to accept it, but I am
(11) truly sorry for the hardships I have caused the
(12) family, for my business mistakes.

(13) I really would like the opportunity, if
(14) it's possible, that my attorney could pass my file
(15) which is so thick with not things against me, but
(16) business transactions that I have done, Your Honor,
(17) and successfully completed.

(18) My bank records are in there with at
(19) least a half dozen - plus Latah Motors makes about
(20) 14 mobile homes transactions that I've received
(21) people's money in my custody and I properly sent it
(22) to Vanderbilt Mortgage, Your Honor. All those
(23) documents are in the files. The ownership of my
(24) Kenworth trucks, which were over \$55,000 apiece, my
(25) Caterpillar loader, my flatbed trailers, my

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(1) 1800-a-month rent at Airway Court and at the storage
(2) lot in Caldwell that I also kept with 12 homes on it,
(3) Your Honor.

(4) Also, the records that Mr. and Mrs. James
(5) have not seen were my monies that was brought in that
(6) they claim from the - whoever told them it was
(7) partying was wired in fact for a Golden West mobile
(8) home, which I showed them. That monies is all
(9) documented by my Bank of America paperwork where I
(10) was buying these homes, Your Honor, with the people's
(11) cash.

(12) I know, Your Honor, that I got into a
(13) real mess and I was not truthful when I should have
(14) been with the Jameses. I did try - I got into a
(15) panic and I tried to shelter myself maybe from them
(16) being angry at me, and I tried and tried to find a
(17) way to appease them. I honestly just did not have
(18) the funds, Your Honor, to get them the \$45,000.

(19) I did hire an attorney and try to work
(20) out a repayment, but by the time we finally came to a
(21) resolution, Your Honor, I honestly was in such bad
(22) financial condition that I didn't know what to do. I
(23) kept praying that something would occur, I kept
(24) trying hard to make another sale, and it didn't work,
(25) Your Honor.

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(1) And when the warrants were filed I did
(2) panic and I made a very bad judgment, but I felt if I
(3) would come with the money that this would all be
(4) okay.

(5) And, Your Honor, I did go get with my
(6) prior employment. I have all the documentation from
(7) Canyon County for where I got the cashier's check
(8) made out to Canyon County Clerk of the Court for full
(9) restitution for the plea agreement there.

(10) All I've thought about, Your Honor, since
(11) I've - I have been incarcerated for a couple years,
(12) but the short four months I was out, all I tried to
(13) do, Your Honor, was work and beg and anything I could
(14) do with my previous people that I was employed with
(15) to give me a loan. And I did acquire that, Your
(16) Honor. I knew I couldn't do them both at the same
(17) time or I would have tried. This was the smaller
(18) amount.

(19) I did have an agreement, and they will
(20) verify if you call them, that if this would have been
(21) accepted for the plea agreement, which I'm hoping it
(22) still will if I'm not going to be gone for years in
(23) prison, the only reason it hasn't been facilitated is
(24) because the employer says, well, give me something in
(25) writing. At this point no one will do any

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(1) guarantees, and the employer says, well, I'm not
(2) going to get my payments 10 years from now.

(3) So I did have it worked out that if this
(4) was - if I were to get some opportunity, Your Honor,
(5) to make some payment, I could get this loan for the
(6) first one, and they told me as soon as I got this
(7) loan paid off, which would possibly take me six
(8) months to a year, they would give me the larger loan
(9) for the money to pay off the Jameses. So - and this
(10) cashier check here, Your Honor, is it all
(11) verifiable.

(12) THE COURT: All right. Well, thank you very
(13) much, Mr. McAmis.

(14) DEFENDANT MCAMIS: Yes, sir, Your Honor.

(15) THE COURT: I appreciate your remarks.

(16) DEFENDANT MCAMIS: Your Honor, can I say one
(17) last thing?

(18) THE COURT: Certainly.

(19) DEFENDANT MCAMIS: If you do get an
(20) opportunity, Your Honor, to look at my file, just
(21) please note that I spent my whole life savings on
(22) trucks and machinery and equipment. My overhead and
(23) bills going out off of my credit cards and things to
(24) my business on my rent, my payments on my trucks, my
(25) insurance, the Department of Transportation,

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(1) insurance, all those were way in excess of I'd say
(2) \$100,000, Your Honor, to 180, that's everything I
(3) ever owned.

(4) And I would never spend \$180,000 to steal
(5) two small mobile home paychecks, Your Honor. It was
(6) honestly only a business mistake and it's my mistake,
(7) but if you can please look through all those
(8) documents, Your Honor, you'll see it was not a
(9) fly-by-night purposeful whatever they called it where
(10) I just set it up. I spent a hundred times more, Your
(11) Honor, than what - and I didn't walk away with a
(12) penny.

(13) If you look at where it went, it's all in
(14) my bank records, Your Honor, and in my business
(15) records. And there is a huge file right here that my
(16) attorney can give you, if you like, Your Honor.

(17) THE COURT: Well, we'd be glad to see those
(18) documents as you and Mr. Hallin think appropriate.

(19) DEFENDANT MCAMIS: Yes, sir.

(20) All right. Based on the nature of the
(21) offense and the information in the presentence
(22) investigation, the presentation of the prosecutor and
(23) that of defense counsel, our supplemental testimony
(24) from Mr. and Mrs. James and Mr. McAmis's presentation
(25) here today, the application of the weighted ends of

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REPORTER'S CERTIFICATE

STATE OF IDAHO)
) ss.
COUNTY OF WASHINGTON)

I, DENECE GRAHAM, Certified Shorthand Reporter
and Notary Public duly qualified in and for the State
of Idaho do hereby certify:

That said hearing was taken down by me in
shorthand at the time and place therein named and
thereafter reduced to computer type, and that the
foregoing transcript contains a true and correct
record of the said hearing, all done to the best of
my ability.

I further certify that I have no interest in
the event of this action.

WITNESS my hand this 24th day of March, 2009.

DENECE GRAHAM, D.R., C.S.R. #324
Official Court Reporter

Court Reporter's transcript lodged this ____ day of
March, 2009.
Sherry Ward
Clerk of the District Court

By _____
Deputy

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

STATE OF IDAHO,)
Plaintiff/Appellant,)
)
vs)
GREGORY MCAMIS,)
Defendant/Respondent.)
_____)

SUPREME COURT #40417-2012

CERTIFICATE OF EXHIBITS

I, Sherry Ward, Clerk of the District court of the Third Judicial District of the State of Idaho, in and for Adams County, do hereby certify that the foregoing Record in this cause was compiled and bound under my direction as, and is a true, correct and complete Record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I do further certify that all exhibits, offered or admitted in the above entitled cause, will be duly lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcript and Clerks Record. The attached Exhibit List contains the exhibits which were offered or admitted into evidence during the trial in this cause.


In addition to the exhibits identified in the attached Exhibit List, the following will be submitted as exhibits to this Record on Appeal:

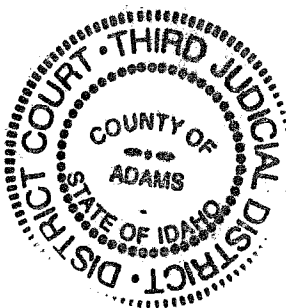
1. Plaintiff's Exhibit 1 - Reporter's Transcript of Proceeding July 7, 2008
2. Plaintiff's Exhibit 2 - Reporter's Transcript of Proceeding October 9, 2008

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Council, Idaho, this 5th day of December, 2012.

Sherry Ward
Clerk of the District Court

By


Deputy Clerk



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

STATE OF IDAHO,
Plaintiff/Respondent,

vs

GREGORY MCAMIS,
Defendant/Appellant.

SUPREME COURT #40417-2012

CLERK'S CERTIFICATE

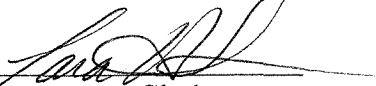
I, Sherry Ward, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for Adams County, do hereby certify that the foregoing Record in this cause was compiled and bound under my direction as, and is a true, correct and complete Record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

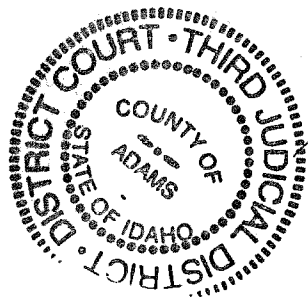
I do further certify that all exhibits, offered or admitted in the above entitled cause, will be duly lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcript and Clerk's Record. The attached Exhibit List contains the exhibits which were offered or admitted into evidence during the trial in this cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Council, Idaho, this 5th day of December, 2012.

Sherry Ward
Clerk of the District Court

By


Deputy Clerk



CLERK'S CERTIFICATE

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

GREGORY MCAMIS,

Petitioner/Appellant,

vs

STATE OF IDAHO,

Respondent/Respondent on Appeal.

SUPREME COURT #40417

CERTIFICATE OF SERVICE

I, Sherry Ward, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Adams, do hereby certify that I have personally served or mailed, by United States Mail, one copy of the

REPORTER'S TRANSCRIPT AND CLERK'S RECORD

TO each of the Attorneys of Record in this cause as follows:

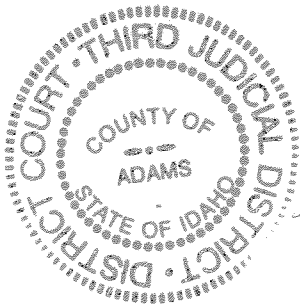
SARA B THOMAS
State Appellate Public Defender
3050 N Lake Harbor Ln Ste 100
Boise, ID 83703

LAWRENCE WASDEN
Attorney General
Statehouse PO Box 83720
Boise, ID 83720-0010

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court
this 25th day of February, 2018.

Sherry Ward
Clerk of the District Court

By Deputy Clerk



CERTIFICATE OF SERVICE

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

STATE OF IDAHO,

Plaintiff/Respondent,

vs

GREGORY MCAMIS

Defendant/Appellant,

SUPREME COURT #40417

NOTICE OF SERVICE
OF CLERK'S RECORD

Notice is hereby given that on 25th day of February 2013 the Clerk's Record and Reporter's Transcript in the above-referenced appeal was lodged with the District Court Clerk.

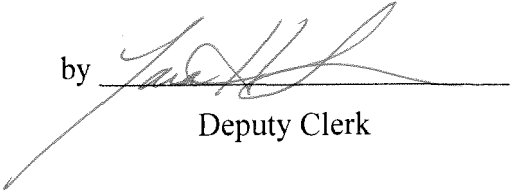
The parties shall have twenty-eight (28) days from the date of service of the appeal record to file any objections, together with a Notice of Hearing, with the District Court. If no objection is filed, the record will be deemed settled and will be filed with the Supreme Court.

If there are multiple (Appellants)(Respondents), I will serve the record, and any transcript, upon the parties upon receipt of a stipulation of the parties, or court order stating which party shall be served. If no stipulation or order is filed in seven (7) days, I will serve the party whose name appears first in the case title.

Sherry Ward

Clerk of the District Court

by


Deputy Clerk

cc: Clerk of the Court
Idaho Supreme Court
PO Box 83720
Boise, ID 83720-0101

